

September 19, 2006



**TRANSCRIPT**  
**September 19, 2006**

**MONTGOMERY COUNTY COUNCIL**

Councilmember George Leventhal, President  
Councilmember Marilyn J. Praisner, Vice President  
Councilmember Phil Andrews      Councilmember Howard Denis  
Councilmember Nancy Floreen      Councilmember Michael Knapp  
Councilmember Thomas Perez      Councilmember Steven A. Silverman  
Councilmember Michael Subin

September 19, 2006



[MUSIC]

Council President Leventhal,  
Is Reverend Lookingbill here? Hi, good to see you. Why don't we -- go ahead please,  
Reverend. Let's rise for an invocation from the Reverend Jan Lookingbill of the  
Emmanuel Lutheran Church in Bethesda.

Reverend Jan Lookingbill,  
Let us pray. Oh Lord, our Lord, how excellent is your name in all the earth, but  
especially we are grateful and are reminded always of the beauty of this county, of the  
resources rich and deep. The resources that we have not only of the farmlands and also  
the cities, but also the richness of our people, the creativity, the technology, the sports,  
the children. We give you thanks for all of these resources but we pray, Heavenly  
Father, we will also be mindful of the problems, for there are many challenges that face  
us. The difficulty of being your people together, of voting and of being heard and sharing  
our ideas, caring for those who are needy, caring for the poor, watching over those  
children who are, in fact, desperate. Help us, Heavenly Father, always to face these  
challenges with wisdom, with security, without any fear, for you have given us ample  
opportunity to be able to share this wonderful, rich, and creative life. Bless these leaders  
of this county who meet this day and continue to meet throughout the year. May they  
always act with wisdom, with sincerity, with generosity, and with a wholeness that  
comes from the Being that you have given to us. Oh Lord, our Lord, how rich and  
wonderful is your name. We pray on that Holy name this day. Amen.

Council President Leventhal,  
Amen. Thank you so much for those words. We have a presentation by Councilman  
Knapp in recognition of Constitution Week.

Councilmember Knapp,  
Good morning, everyone. I am joined this morning by Susan Finonni[ph] from the  
Goshen Mills Chapter of the DAR in recognition of the 219th anniversary of the United  
States Constitution. I usually look to my esteemed colleague from District One,  
Councilmember Denis, to talk of all things historical and philosophical. So I will be brief  
in my remarks and observations. But I just have two, briefly. The first is as we look past  
the situations we have seen over the course of the past week with elections I continue  
to be struck that as we look back at the Constitution that we have a very simple  
framework, that in spite of issues we may run into in our election and elections we've  
seen in 2000 nationally, that we continue to have a very simple framework that allows  
us to govern and continue to operate on a regular basis and that it continues to stand  
the test of time. And as I continue to traverse fatherhood -- I'm the father of two young  
daughters -- and a number of us up here have small children who tend to pay more  
attention to elections than most normal small children would, I find myself traveling  
around from place to place and getting asked questions about various elements of  
government and elections, which is always interesting, because then it actually tests



September 19, 2006

1 whether I really know what I think I know. And I also am struck because I'd rather have  
2 them me questions about that, being the father of two young daughters, than some of  
3 the other things that young daughters will ask about. And so I find that children are kind  
4 of the -- I guess I'm struck by the wisdom of children, and they have a very good smell  
5 test. And they find if something -- you can find if something's working well or not working  
6 by your description to them and then their general consideration of that. And so as I  
7 describe different reasons of why our government is the way that it is and you kind of  
8 put the response back and you get silence from the back seat as they ponder it and  
9 then they go, "Hmm, that makes sense." I find that that's very reassuring, because I find  
10 if it passes their test that generally it'll pass everybody else's. And I find that to be the  
11 case with the Constitution on a fairly regular basis. And so it's my pleasure to be able to  
12 present this proclamation on behalf of the County Council to Susan. And let me read it  
13 just briefly. A Proclamation: WHEREAS, the Constitution of the United States embodies  
14 the ideas and principles of our founding fathers supplemented by the wisdom and  
15 changes that have been reflected in our changing republic over two centuries, And  
16 WHEREAS, this fall marks the 219th anniversary of the framing of our Constitution by  
17 the by the 1787 Constitutional Convention, And WHEREAS, the Constitution does not  
18 only embody the hopes and aspirations of Americans for liberty and representative  
19 government, but also has inspired people seeking freedom the world over. Now,  
20 therefore, it be resolved that the Montgomery County Council recognizes the 219th  
21 anniversary of the U.S. Constitution and urges constant vigilance of county residents in  
22 protecting our liberties and rights for generations of Americans still to come. Signed on  
23 this 19th day of September in the year 2006, George Leventhal, Council President.

24  
25 Susan Finonni[ph],  
26 Thank you.

27  
28 Councilmember Knapp,  
29 Thank you very much, and I would now turn the mic over to you, Susan, to see if you  
30 have any inspiring remarks for us.

31  
32 Susan Finonni[ph],  
33 Well, I don't know if I have any inspiring, you stole a little bit of my thunder. I just want to  
34 reiterate that the Constitution is the oldest document still in active use that outlines the  
35 self-government of a people. The Daughters of the American Revolution, which was  
36 established in 1890, called on Congress to pass a law to dedicate one week in  
37 recognition of the Constitution, and President Eisenhower signed that on August 2,  
38 1956. The Daughters of the American Revolution is the world's largest women's patriotic  
39 organization, with over 168,000 members in the United States and 11 foreign countries  
40 and their purpose is to promote patriotism through commemorative celebrations such as  
41 this. Thank you very much.

42  
43 Councilmember Knapp,



September 19, 2006

1 Thank you very much, I appreciate it. We need a picture. Great. Thank you and thank  
2 you to the DAR.

3  
4 Susan Finonni[ph],  
5 Thank you. Thank you.

6  
7 Council President Leventhal,  
8 Thanks to Mr. Knapp for commemoration of Constitution Week. I want to point out to my  
9 colleagues with thanks and appreciation to the Chair of the MFP Committee that the  
10 discussion that began and was unfortunately truncated yesterday with the Board of  
11 Elections will be continued Wednesday afternoon at 2:15. The Management and Fiscal  
12 Policy Committee will meet. I have consulted with Ms. Lauer and the MFP Chair. There  
13 are no other Committee meetings that afternoon and I know that in addition to the  
14 distinguished members of the MFP Committee other Councilmembers may want to  
15 attend Wednesday afternoon at 2:15. and the Chair has assured me there will not be an  
16 end limit as to questions from Councilmembers or the end of that Committee meeting. I  
17 know I will be attending and other Councilmembers may wish to as well. Vice President  
18 Praisner.

19  
20 Councilmember Praisner,  
21 Yes, I just wanted to reiterate that all Councilmembers knew prior to the brief meeting  
22 yesterday that the meeting would have to be brief in order to allow the Board of  
23 Elections to do what I think we all want them to do, which is to go count the votes, which  
24 is what they are about for this week. And the meeting is scheduled, not on Tuesday next  
25 week, because the Board of Elections is required to be engaged in the certification of  
26 the election and could not give us a specific time because of that process. So the  
27 soonest that they could be available was Wednesday and that's the soonest that we  
28 scheduled the Committee meeting.

29  
30 Unidentified Speaker,  
31 A week from tomorrow?

32  
33 Councilmember Praisner,  
34 A week from tomorrow. Just wanted to make sure the public knows. And, again, for the  
35 umpteenth time, this is not a hearing, it is a meeting, and maybe sometime the reporters  
36 will get it right.

37  
38 Council President Leventhal,  
39 We thank the Council Vice President and the Chair of the MFP Committee for facilitating  
40 this meeting at the earliest possible opportunity. We have acknowledged Constitution  
41 Week. I want to point out to my colleagues that today is one of my favorite days of the  
42 year. It is national "Talk Like a Pirate Day."

43  
44 [LAUGHTER]



September 19, 2006

Councilmember Praisner,  
Hearty -- Hearty matey!

Council President Leventhal,  
And I warn you bilge rats that if you don't commemorate it, you'll walk the plank! Ms. Lauer, you scurvy wench, are there any announcements or acknowledgements or agenda changes for this morning.

Linda Lauer,  
Aye, sir. Okay.

Multiple Speakers,  
[INAUDIBLE]

Councilmember Praisner,  
But the ballots are all in, so...

Linda Lauer,  
On the Consent Calendar I did want to note there are additional sponsors for the Special Appropriation that's being introduced today on the Wheaton Sports -- on the Sports Academies for the Recreation Department. In addition to Councilmember Praisner we have Councilmembers Subin, Perez, and Denis, and that hearing will be scheduled for October 3rd. Item L is being deleted; it's the resolution to support Habitat For Humanity of Montgomery County's application for a state tax credit program. They decided they didn't need the tax credit program application. Okay, Legislation Session: two additional bills have been received from the Executive and are scheduled for introduction. Expedited Bill 40-06: Cable Communications Amendments going for public hearing on October 3rd. and Expedited Bill 41-06: Consumer Protection Internet Access also October 3rd at 1:30. On Thursday night the hearing that was planned on the Zoning Text Amendment for signs in places of assembly, Zoning Text Amendment 06-23, we are going postpone that. The hearing will be continued on Tuesday at 1:30. Thank you.

Council President Leventhal,  
Okay, thank you. Are there Minutes approved?

Council Clerk,  
We have the Minutes of July 25th for approval.

Councilmember Knapp,  
Move approval.

Councilmember Praisner,



September 19, 2006

1 Second.

2  
3 Council President Leventhal,  
4 Mr. Knapp has moved and Ms. Praisner has seconded approval of the Minutes of July  
5 25th. Those in favor will signify by raising your hands. It is unanimous among those  
6 present. Turn now to the Consent Calendar. Can I get a motion to approve the Consent  
7 Calendar?

8  
9 Councilmember Andrews,  
10 Move approval.

11  
12 Councilmember Perez,  
13 Second.

14  
15 Council President Leventhal,  
16 Mr. Andrews has moved and Mr. Perez has seconded adoption of the Consent  
17 Calendar. Mr. Silverman.

18  
19 Councilmember Silverman,  
20 In connection with Item 2-D, what Committee does that go to?

21  
22 Council President Leventhal,  
23 I would assume that would be the PHED Committee.

24  
25 Councilmember Silverman,  
26 Okay, then I will save my questions for Committee work session. I guess I have a  
27 threshold question. Are we intending to revisit every decision that we made in the spring  
28 budget?

29  
30 Council President Leventhal,  
31 Is that question directed to the sponsor of the Special Appropriation?

32  
33 Councilmember Silverman,  
34 Oh, it sure is.

35  
36 Councilmember Praisner,  
37 My answer is no.

38  
39 Councilmember Silverman,  
40 Well, what I would like to get from staff, I guess this would be the Department of  
41 Recreation, is what other high schools could utilize Sports Academies, since this was  
42 rejected by the Council in the spring and I don't understand why we would limit it to -- if  
43 we're gonna revisit spring budget decisions then we ought to take a look at what options  
44 there are countywide, as opposed to just three Sports Academies that happen to be



September 19, 2006

1 referenced here. So I'll ask the Department of Recreation staff to look at that issue. And  
2 we'll take it up in Committee. Thank you.

3  
4 Council President Leventhal,  
5 Ms. Praisner, did you want to speak to that item?

6  
7 Councilmember Praisner,  
8 No. I had another...

9  
10 Council President Leventhal,  
11 Okay, let me call on Mr. Denis first and then Ms. Praisner.

12  
13 Councilmember Denis,  
14 Thank you, Mr. President, on Item O I am delighted by Jack Hayes' reappointment to  
15 the Bethesda Urban Partnership. Mr. Hayes has done an excellent job for the  
16 community as President of the East Bethesda Citizens Association and he has already  
17 been Chairman of the Urban Partnership. And I'm thrilled that he wants to serve another  
18 term and that he has been reappointed.

19  
20 Council President Leventhal,  
21 Ms. Praisner.

22  
23 Councilmember Praisner,  
24 I had a question on the Supplemental Appropriation for the Multi-Agency Driver Training  
25 Facility. And would hope that through the public hearing process that we can hear from  
26 the Department. I know there is a less than ideal situation iteration associated with this  
27 bid, but I fail to understand why we didn't know -- since we are talking about a facility in  
28 an area that we know about -- about the conditions of the ground and the rock issues  
29 that seem to have exacerbated the increase in the cost. So I would like to have that at  
30 the hearing process, please.

31  
32 Minna Davidson,  
33 We will convey that request.

34  
35 Council President Leventhal,  
36 Mr. Andrews.

37  
38 Councilmember Andrews,  
39 Thank you, Mr. President. I want to just comment briefly on Item P on the Consent  
40 Calendar, which is the receipt and release of the latest Office of Legislative Oversight  
41 Report on the review of Montgomery County Public Schools Serious Incident Reporting.  
42 This has been an issue for some time in working to improve public access to information  
43 about serious incidents that occur on school property. And the Office of Legislative  
44 Oversight has again done an excellent job in looking at the issue and making





September 19, 2006

1 recommendations. One of the recommendations is that by next April Montgomery  
2 County Public Schools would have a plan for producing a School Safety Report that  
3 would provide easily accessible information to the public about serious incidents on  
4 school property. And that would have at least standards that would be, we hope,  
5 interpreted uniformly across the School System in terms of what would be provided in  
6 that report. It also addresses the issue of a -- working out agreements between the  
7 Police Department and the School System about how serious incidents are handled. So  
8 I think this is a very important subject and the Public Safety and the Education  
9 Committees will have a joint work session on October 19th on the report.

10  
11 Council President Leventhal,  
12 If there are no further comments the Consent Calendar is now before the Council for  
13 approval. Those in favor will signify by raising their hands. It is unanimous among those  
14 present. The County Council is now in Legislative Session. Is there a Legislative Journal  
15 for approval?

16  
17 Council Clerk,  
18 You have the Journal of July 25th.

19  
20 Councilmember Praisner,  
21 Move approval.

22  
23 Council President Leventhal,  
24 Mrs. Praisner has moved and Mr. Knapp has seconded approval of the Legislative  
25 Journal for July 25th. Those in favor will signify by raising their hands. It is unanimous  
26 among those present. We have four bills before us for introduction. The first, Bill 38-06:  
27 Technical Corrections. Public hearing scheduled for October 10th. The second,  
28 Expedited Bill 39-06: Streets and Roads, Fees, Preliminary Subdivision Plans  
29 sponsored by the Council President at the request of the County Executive. The public  
30 hearing is scheduled for October 24th at 1:30 in the afternoon. Mr. Denis, did you have  
31 comments?

32  
33 Councilmember Denis,  
34 No, I was waiting. Item 5.1. I'm sorry.

35  
36 Council President Leventhal,  
37 Okay, we're not there yet. We're in Legislative Session. The third bill being introduced is  
38 Expedited Bill 40-06: Cable Communications Amendments. The public hearing is  
39 scheduled on October 3rd at 1:30 in the afternoon. And the fourth bill being introduced  
40 is Expedited Bill 41-06: Consumer Protection Internet Access. Public hearing scheduled  
41 for October 3rd at 1:30 p.m. Without objection those four bills are introduced. We are  
42 now in District Council session. And we have before us a Subdivision Regulation  
43 Amendment Number 06-02 to be introduced relating to fees, preliminary subdivision  
44 plans. We need a motion to establish a public hearing on October 24th.





September 19, 2006

1  
2 Councilmember Praisner,  
3 So moved.

4  
5 Council President Leventhal,  
6 Ms. Praisner has moved and I need a second... Mr. Perez has seconded establishing a  
7 public hearing on October 24th at 1:30 p.m. Those in favor will signify by raising their  
8 hands. It is unanimous among those present. We are now on Mr. Denis' item, 5.1:  
9 introduction of ZTA 06-24: Home Occupations - Furniture Displays. Mr. Denis.

10  
11 Councilmember Denis,  
12 Thank you, Mr. President. I apologize for jumping the gun but I am today introducing  
13 Zoning Text Amendment 06-24 dealing with Home Occupations - Furniture Displays.  
14 The display of furniture for sale customarily takes place in furniture display facilities  
15 located in commercial zones. The Department of Permitting Services recently has  
16 interpreted the ordinance governing home occupations as permitting in single-family  
17 homes in residential zones the display of furniture for sale. This interpretation is contrary  
18 to the language of the existing ordinance governing home occupations and the clear  
19 intent of the Council. This interpretation is alarming as it opens up neighborhoods to  
20 further commercialization. Neighborhoods that border our business districts, such as  
21 River Road near [West Bard] where we have had issues, the Green Mile -- the Green  
22 Mile is between the Friendship Heights Central Business District and the Bethesda  
23 Central Business District along Wisconsin Avenue, approximately 1.1 miles. It has been  
24 constantly threatened and that threat continues. And also along Old Georgetown Road.  
25 These neighborhoods are already under tremendous pressure. This problem has been  
26 exacerbated by the administrative interpretation that we have from the Department of  
27 Permitting Services. I am therefore introducing this Zoning Text Amendment to preclude  
28 such activity as a home occupation and am hopeful that this legislation may be acted  
29 upon as expeditiously as possible. And I appreciate the public hearing scheduled for  
30 October 24th at 1:30 p.m. Thank you very much.

31  
32 Council President Leventhal,  
33 Thank you, Mr. Denis. We now need action on a resolution to establish a public hearing  
34 for October 24th on the Clarksburg Corrective Map Amendment Number G-857. Can I  
35 get a motion to that effect?

36  
37 Councilmember Perez,  
38 So moved.

39  
40 Councilmember Praisner,  
41 Seconded.

42  
43 Council President Leventhal,



September 19, 2006

1 Mr. Perez has moved and Vice President Praisner has seconded establishing a public  
2 hearing on October 24th for the Clarksburg Corrective Map Amendment. Those in favor  
3 of holding the public hearing will signify by raising their hands. It is unanimous among  
4 those present. We now need a resolution to extent time until November 22nd for  
5 Council action on the Damascus Sectional Map Amendment Number G-854. Can I get a  
6 motion to that effect?

7  
8 Councilmember Praisner,  
9 So moved.

10  
11 Councilmember Floreen,  
12 Second.

13  
14 Council President Leventhal,  
15 Ms. Praisner has moved and Ms. Floreen has seconded an extension of time until  
16 November 22nd. Those in favor of extending the time on the Damascus Sectional Map  
17 Amendment will signify by raising their hands. It is unanimous among those present. We  
18 now turn to ZTA 06-08: Accessory Buildings in One-Family Residential Zones. The  
19 PHED Committee has recommended approval. Chairman Silverman.

20  
21 Councilmember Silverman,  
22 Thank you, Mr. President. ZTA 06-08 addresses a issue involving the construction of  
23 large accessory buildings on small lots. This would require additional setbacks from the  
24 rear or side property line for any accessory building or structure that has a linear  
25 dimension greater than 24 feet. The Committee recommended that it be approved with  
26 the following revisions: Since DPS interpreted a structure to include a swimming pool  
27 the Committee clarified that a swimming pool is not subject to additional setback  
28 requirements. The Committee also included a provision allowing existing accessory  
29 buildings to continue under the standards in effect when the accessory building was  
30 constructed, but that any replacement or reconstruction would be required to conform to  
31 the standards in effect at the time of replacement or reconstruction. And finally a  
32 provision in the Garrett Park Overlay Zone that allows accessory buildings on lots  
33 smaller than 8,600 square feet to continue to cover 25 percent of their rear yard.  
34 Otherwise the Committee recommended approval.

35  
36 Council President Leventhal,  
37 Are there any questions or comments on ZTA 06-08? Seeing none, the clerk will call the  
38 roll.

39  
40 Councilmember Denis,  
41 Yes.

42  
43 [LAUGHTER]  
44



September 19, 2006

1 Council Clerk,  
2 Mr. Denis?  
3  
4 Councilmember Knapp,  
5 Well done!  
6  
7 Council Clerk,  
8 Ms. Floreen?  
9  
10 Council President Leventhal,  
11 Ms. Floreen?  
12  
13 Council Clerk,  
14 Ms. Floreen?  
15  
16 Councilmember Floreen,  
17 Yes.  
18  
19 Council Clerk,  
20 Mr. Silverman?  
21  
22 Councilmember Silverman,  
23 Yes.  
24  
25 Council Clerk,  
26 Mr. Knapp?  
27  
28 Councilmember Knapp,  
29 Yes.  
30  
31 Council Clerk,  
32 Mr. Andrews?  
33  
34 Councilmember Andrews,  
35 Yes.  
36  
37 Council Clerk,  
38 Mr. Perez?  
39  
40 Councilmember Perez,  
41 Yes.  
42  
43 Council Clerk,  
44 Ms. Praisner?



September 19, 2006

1  
2 Councilmember Praisner,  
3 Yes.

4  
5 Council Clerk,  
6 Mr. Leventhal?

7  
8 Council President Leventhal,  
9 Yes, the ZTA passes on a vote of 8-0. We now have a request for oral argument before  
10 the District Council relating to Application Number G-841. Applicants are Shady Grove  
11 Investors I, LLC, and Shady Grove Investors II, LLC. The Hearing Examiner  
12 recommended a denial of this application. Ms. Carrier.

13  
14 Francoise Carrier,  
15 I think Mr. Leventhal has framed where we are well. I recommended denial on legal  
16 grounds. The Planning Board and the technical staff recommended approval. And you  
17 have request for oral argument from the applicant who believes that my legal reasoning  
18 was faulty. I don't know if the Council wishes me to elaborate, I'll be happy to.

19  
20 Council President Leventhal,  
21 Well, we have questions, so let's see what Councilmembers desire. Ms. Praisner.

22  
23 Councilmember Praisner,  
24 Actually I was going to move the motion to grant legal -- oral argument.

25  
26 Councilmember Andrews,  
27 Second.

28  
29 Councilmember Praisner,  
30 And the substance of the oral argument would be the basis of the Hearing Examiner's  
31 recommendation related to the PD Zone and the other issues that you've raised.

32  
33 Council President Leventhal,  
34 Okay, a motion has been raised and seconded to grant oral argument. Ms. Floreen.

35  
36 Councilmember Floreen,  
37 Thank you. I read your analysis with interest and it is a strict legal question, really...

38  
39 Francoise Carrier,  
40 I believe it is.

41  
42 Councilmember Floreen,  
43 ...whether or not the PD Zone can be granted on nonresidential property. That's really  
44 the question, the only question at issue.



September 19, 2006

1  
2 Francoise Carrier,  
3 You are absolutely right.

4  
5 Councilmember Floreen,  
6 And I guess what I would like is if there is going to be oral argument I would like some  
7 input on this from the Park and Planning Commission, because it seems to me that if  
8 this is a -- it's a threshold point.

9  
10 Francoise Carrier,  
11 Well, the Planning Board's Letter of Recommendation in this case does address the  
12 issue to some degree and there were some limited excerpts in my record from the  
13 Planning Board's hearing. You can't get a full sense of their discourse. because the  
14 excerpts were the ones showing one side of the argument. We don't have the other side  
15 of the argument. So I don't know exactly how the dialogue went. It is clear that the issue  
16 was discussed in front of the Planning Board. The majority of the members felt they  
17 were really relying on a decision that the Council made based on my recommendation  
18 in 2003 in another case, which was G-803. And as I said in my report in that case the  
19 issue was not really discussed and I think I just didn't give it sufficient analysis. And this  
20 time it was squarely raised. I also have gained a great deal more familiarity with the PD  
21 Zone in the last three years, having done a number of cases. And the zone has many  
22 elements to it. Taking all of those elements together I felt, this time around, that the  
23 decision that I recommended the last time was incorrect. The Planning Board obviously  
24 didn't have -- I wasn't there to tell them that I thought I was wrong and that the Council  
25 followed my recommendation erroneously three years ago. So they were relying on that.  
26 Whether they would make a different recommendation if asked again, I don't know.

27  
28 Councilmember Floreen,  
29 So that point was vetted and debated at the Planning Board?

30  
31 Francoise Carrier,  
32 It was, and one member of the Planning Board stated that she felt the precedent that  
33 was established in G-803 should not be further promulgated because she felt that it was  
34 a mistake. And technical staff in their report suggested that -- they seemed to me sort of  
35 equivocal as to whether they thought it was actually a good interpretation. But they said,  
36 "It is out there, the Council has done this before." And they apparently talked to  
37 someone at the County Attorney's Office -- although there is nothing in writing that I am  
38 aware of -- and someone at the County Attorney's Office apparently told them, "Yes, it's  
39 fine to follow what was done in G-803." And so I am not sure if technical staff -- what  
40 their actual view of it was. But they felt it had been done before and so it could be done  
41 again.

42  
43 Councilmember Floreen,



September 19, 2006

1 In any event, I think it is very important issue to be resolved. And we obviously should  
2 resolve it and hear from both sides on it. And what you are telling me basically is that  
3 the recommendations of the Planning Board were based more on precedent and policy  
4 as evidenced in the material in the record?

5  
6 Francoise Carrier,

7 Right. Right. I mean I think there is an understandable frustration for the Planning Board  
8 when a development is proposed that meets what they currently feel would be good  
9 policy for that area. It just happens that the way our zoning ordinance is written, in my  
10 view -- if you are in a zone, the PD zone, which requires substantial compliance with the  
11 Master Plan and you have to make the findings on a development plan that it complies  
12 with the use and density, then you don't have the liberty to depart from what the Master  
13 Plan recommended because now people have a different view with changing  
14 circumstances or whatever.

15  
16 Councilmember Floreen,

17 Okay. All right. Thank you very much. I support the motion.

18  
19 Council President Leventhal,

20 Okay. Thank you. The motion is to grant oral argument on -- to debate the Hearing  
21 Examiner's recommendations on Application Number G-841. Those in favor of granting  
22 oral argument will signify -- do we need a roll call to grant it? Or do we -- we can do that  
23 with a show of hands. Those in favor of granting oral argument will signify by raising  
24 their hands. It is unanimous among those present.

25  
26 Jeff Zyontz,

27 If I may? I think you have time on next week's agenda if you wanted to take this up...

28  
29 Council President Leventhal,

30 Oral argument will be scheduled on September 26th. Thank you. Okay, we now need a  
31 motion to approve a resolution to extend time for Council action on Local Map  
32 Amendment G-841 until October 31st.

33  
34 Councilmember Praisner,

35 So moved.

36  
37 Council President Leventhal,

38 Vice President Praisner has moved. We need a second to extend time...

39  
40 Councilmember Floreen,

41 Second.

42  
43 Council President Leventhal,







September 19, 2006

1 Council President Leventhal,  
2 County Council is in session, the District Council. We are hearing oral argument by the  
3 applicants, and I believe also by the neighbors, am I correct? And who will walk us  
4 through this – will it be our hearing examiner or Mr. Zyontz?

5  
6 Mr. Zyontz,

7 I actually have a role, sort of as a referee, a little bit for the Council. Essentially the first  
8 part, as you will hear, twenty minutes unless the applicant reserves some for rebuttal.  
9 You'll then hear from those in opposition to the application. They have twenty minutes  
10 combined, however they wish to divide it. There are two people that wanted to speak  
11 that way. And then the hearing examiner is available for your questions, or whatever  
12 presentation you would like from the hearing examiner. Mr. Grossman has brought  
13 exhibits that he thought might be helpful to the council, from the record. And, Mr.  
14 Grossman, would you like to just say anything else introductory?

15  
16 Mr. Grossman,

17 I will just want to say, as Mr. Zyontz indicated, I have brought Exhibit 37, Application 37,  
18 showing their vision of the building that they intend for Hampden Lane, and also their  
19 Exhibit 59, which are some of the photos showing the adjacent development in the area  
20 currently for the question of compatibility. Because the issues here -- it's not really an  
21 issue of whether or not the TR Zone is appropriate, it's really an issue of the  
22 development plan itself and whether or not it is sufficiently compatible with the adjacent  
23 development, and whether it is consistent with the vision of the sector plan which calls  
24 for a low-rise urban village. So those are really the issues that are involved.

25  
26 Council President Leventhal,  
27 Okay.

28  
29 Mr. Zyontz,

30 And just one other point. Mr. Grossman will interrupt people if they go off the record  
31 since he's most familiar with the record here. So that is his role in this as well.

32  
33 Council President Leventhal,

34 All right, thank you, Mr. Zyontz. Now I have -- there are two lights on. Is it my colleagues  
35 desire to make statements prior to the applicant's presentation? Okay. Ms. Floreen,  
36 followed by Mr. Knapp.

37  
38 Councilmember Floreen,

39 Thank you. Mr. Grossman, does that picture show the HOC portion of this?

40  
41 Mr. Grossman,

42 No, the HOC portion is -- would be, yes, to that side of it as indicated.

43  
44 Councilmember Floreen,



September 19, 2006

1 Is that reflected or is that what's there now?

2  
3 Mr. Grossman,

4 No, this is --

5  
6 Councilmember Floreen,

7 Okay, that's totally separate from this.

8  
9 Mr. Grossman,

10 That may reflect it. Actually that may reflect it, as you were pointing out, but I don't think  
11 that was the intent of the exhibit per se. The HOC building would be a three-story  
12 building which would house twelve units, transitional housing units. So that is a three-  
13 story building. That is intended so that is --

14  
15 Councilmember Floreen,

16 But this elevation does not include that?

17  
18 Mr. Grossman,

19 Well, it pretty much does. This building right here is the intended HOC building, a three-  
20 story rise.

21  
22 Councilmember Floreen,

23 Thank you.

24  
25 Council President Leventhal,

26 Mr. Knapp.

27  
28 Councilmember Knapp,

29 I was just wondering if Mr. Zyontz could, before we begin, could restage the scope of  
30 the oral argument that we're about to hear.

31  
32 Mr. Zyontz,

33 I believe you had three issues that outlined for everyone, and certainly the compatibility  
34 issue is one that you're addressing. You're addressing the role of the ARC in this  
35 decision. And now I forgot the third item.

36  
37 Mr. Grossman,

38 The vision of the sector plan.

39  
40 Mr. Zyontz,

41 The vision of the sector plan, with regard to judging the development.

42  
43 Councilmember Knapp,

44 Great. Thank you very much.



September 19, 2006

1  
2 Council President Leventhal,  
3 Okay. Mr. Kominers, you have twenty minutes.

4  
5 Mr. Kominers,  
6 Mr. Leventhal, before I begin, rather than -- I didn't know the examiner was going to  
7 bring those exhibits. I have some others that I'd prefer to use, so if you would give me a  
8 moment to put them up before that.

9  
10 Council President Leventhal,  
11 Okay, put them up, and then the clerk will begin your time when you've put your boards  
12 up. All right. Please commence the clock.

13  
14 Mr. Kominers,  
15 Good morning. Members of the Council, my name is Bill Kominers. I'm an attorney with  
16 Holland & Knight in Bethesda. I'm here on behalf of Hampden Lane Associates, the  
17 applicant in this case. And I would like to ask all of those who are representing the  
18 property owners or the developers or the people involved in this case, just to raise your  
19 hand to show your interest and support for this. We'll limit our oral argument to the  
20 issues of consistency with the vision of the sector plan and compatibility. Based upon  
21 the county attorney's advise to the hearing examiner, we consider the conflict of interest  
22 issue really a non-issue. We can address it later if you wish. I'd like to just go back  
23 through the review of the project itself.

24  
25 Mr. Grossman,  
26 I have to interrupt. There is no county attorney's advice to the hearing examiner in this  
27 case. There was, in the record, an indication that one of the participants, the head of the  
28 Department of Housing and Community Affairs, had consulted with the county attorney  
29 and had received an okay but no formal opinion, saying that she was not personally  
30 involved, financially, in the development.

31  
32 Council President Leventhal,  
33 Saying that she was not personally involved?

34  
35 Mr. Grossman,  
36 Not personally involved in the development, but I saw it as a broader issue of that fact  
37 that she was participating. And not just I, but it was raised by one of the witnesses, that  
38 she was participating in the alternative review committee, as was Mr. Minton who was  
39 head of HOC, although they had a direct interest in the development. So that's what  
40 raised the conflict issue. And I had indicated in my report that -- I found that opinion of  
41 the Maryland Attorney General that said, in a rule of necessity here, because the statute  
42 required their participation, would allow them to proceed even though there was this  
43 conflict potential.



September 19, 2006

1 Council President Leventhal,  
2 What is the precedent with respect to Mr. Kominer's time? The hearing examiner, which  
3 I understand and it's helpful to have them editorialize, but we're going to have to have  
4 some mechanism where it does not come out of Mr. Kominer's time.

5  
6 Mr. Kominers,  
7 I simply stopped my clock while Mr. Grossman was answering.

8  
9 Mr. Grossman,  
10 I would only interrupt if there was something that's different from what's in the record.

11  
12 Councilmember Floreen,  
13 Or something that's not in the record.

14  
15 Council President Leventhal,  
16 And we appreciate the clarification.

17  
18 Mr. Kominers,  
19 And I apologize for misstating it. We agree with the hearing examiner's position on that.  
20 And I would like to reserve five minutes for rebuttal, if I might, out of that twenty minutes.  
21 The project is a redevelopment of five single-family structures on five lots on the north  
22 side of Hampden Lane. It is a very complex project. It's developed in accordance with a  
23 negotiated joint development agreement with the county, a true public/private  
24 partnership, to allow the 12-unit transitional housing venture by HOC, to provide 15  
25 percent MPDU's, and to develop in accordance with the TSR recommendations.  
26 Importantly, to date, none of the projects that have been developed in this area, in the  
27 TSR District, have provided any MPDU's on-site. The project also reflects compromises  
28 with the design staff to make changes to address the concerns of the residents; it  
29 conforms with the zoning ordinance, the sector plan recommendations and the MPDU  
30 laws, in our opinion. We provide 15 percent MPDU's, therefore we permitted a  
31 comparable increase of 15 percent in the height, or almost up to 75 feet. In fact, the  
32 project provides a maximum height of only 71 feet, an increase of 6 feet over the sector  
33 plan; and then only a portion of the building, about two-thirds of the building, rather than  
34 the entire length; and steps from 33 feet up to 71 feet from west to east. This case is a  
35 test case. It's a question of whether the new MPDU law is a fiction or whether it's  
36 intended to really encourage more MPDU's, because under the MPDU law, the council  
37 can approve a proportional increase in height and densities about what's recommended  
38 in the sector plan if the ARC finds that the project would not be financially feasible  
39 otherwise. That is just what happens. The Planning Board approved it; the Planning  
40 Board staff recommended approval; the Planning Board actually approved it twice; the  
41 ARC recommended approval; and each time unanimously. The two issues are really  
42 whether the development plan is consistent with the vision of the sector plan and  
43 whether it's compatible with the surrounding neighborhood, only with regard to the  
44 development plan. There's no dispute that the project complies with the zoning



September 19, 2006

1 ordinance. Even the hearing examiner acknowledges the property should be rezoned to  
2 TSR, but this can't be decided in a vacuum. The council has to consider this case in the  
3 context of the events subsequent to adoption of the sector plan, such as changes in the  
4 MPDU law, the county's housing policy, smart growth principles, and then make a  
5 decision that weighs those important public policies of MPDU's and transitional housing,  
6 along with everything else. You established the process. The height can exceed the  
7 sector plan recommendations. If a greater height is to be treated as not consistent with  
8 the sector plan, then the new law is a fiction. It's a self-fulfilling prophecy for failure. The  
9 design of the building is something that the planning board looks at as a part of site plan  
10 review in their testing compatibility based on more detailed design. And we will be  
11 working closely with the staff, if we have the opportunity, at that time to produce an  
12 acceptable design. We feel the project complies with the specific quantifiable  
13 recommendations to the sector plan for densities up 100 feet, heights up to 65 feet.  
14 However, those were disregarded by the hearing examiner in favor of the more  
15 amorphous concepts of the vision of the sector plan and compatibility. Bethesda itself is  
16 an urban village; it's not a suburban village. Kentland and Lakeland are suburban  
17 villages. But even as an urban village, the sector plan and the amorphous concept are  
18 only a guide, as the hearing examiner himself notes on page 36 of his report.  
19 Nonetheless, he has elevated that guide and recommendation to a mandate. So how do  
20 we determine what an urban village is? The hearing examiner relies solely on sketch in  
21 the sector plan, on page 33 of his report. That sketch is, in fact, only an illustrative  
22 concept of how development might occur on the TSR Zone. The text of the sector plan  
23 specifically says "for illustrative purposes only -- not intended to convey a general sense  
24 of desirable future development." The hearing examiner has said, in so many words, "I  
25 know it when I see it." In effect, if it doesn't look like that picture, then it's not an urban  
26 village. Let me break it to you -- and I say this with the greatest concern -- nothing in that  
27 area looks like that sketch, if you look at these pictures of the other buildings that have  
28 been approved in that area. The sector plan is not a statute; it's a plan that gets  
29 interpreted. Look at your interpretations, the projects that you, the council, have already  
30 approved in that area, all of which required these same findings, that were considered  
31 consistent with the zoning ordinance and the sector plan recommendations and the  
32 urban village. You have the 10-story Edgemoor high-rise -- that doesn't look like  
33 townhouses. It's 100 feet, not 65 feet. You've got the low-rise Edgemoor condominiums,  
34 and one that's across the street, that has a single entrance in the middle of the building,  
35 not a series of entrances along the street. Where's the townhouse in that building? It's  
36 along Arlington Road -- it's supposed to be 33 feet, it's 46 feet. There's a planned  
37 companion, also along Arlington Road, with the same situation. You have the Triumph  
38 project, does not appear to be a townhouse. It's 73 feet; a flat roof, not a hip or a gable.  
39 Then you have the city homes. These are townhouses, but they don't have apartments  
40 at every level as the sector plan calls for. They're below the density called for in the  
41 sector plan. They're 27 units to the acre, not 45 as the minimum. Only the end units  
42 face the street. Everything else looks inside the project. There are several lessons from  
43 this, as we see it. The urban village is a diverse concept, not rigid and regimented. The  
44 buildings don't march in lockstep down the street in an inflexible and predetermined



September 19, 2006

1 pattern. All of these projects, including city homes, have ignored that sketch. The  
2 council must have intended that 65 feet constitutes a low-rise urban village because  
3 there's no other way to reconcile the sector plan's recommendations. To be internally  
4 consistent, those two things have to mean the same thing. And you've reaffirmed that at  
5 least twice, in the high-rise Edgemoor and in the Triumph building. If you had intended  
6 for less than 65 feet you could have designated a lesser amount. There are plenty of  
7 areas in the sector plan, in the drawing from the sector plan where you have a height  
8 recommendation for only one lot. Compatibility. Compatibility should be determined  
9 based on the surrounding neighborhood, not just the property immediately adjacent.  
10 This is especially true where the City Homes building itself does not comply with the  
11 sector plan's recommendations. An inconsistent building should not be the sole  
12 standard for compatibility of a new building. They are too low density. They are oriented  
13 -- their orientation is suburban rather than urban. They lack the street edge. To base an  
14 evaluation of compatibility on a design which doesn't comply with the sector plan, to me,  
15 inval -- invalidates that whole analysis. In allowing those townhouses to be built there  
16 the Council did not intend that they would then set the standard for which all future  
17 development would ad -- adhere. You did not intend to de facto amend the sector plan  
18 with that approval. Nonetheless, if you look at the compatibility between the City Homes  
19 and our project the height differential is only 10 feet. If you look at this drawing from the  
20 sector plan, there are many, many, many places, not just across big streets, where two  
21 different neighborhoods each have a height recommendation far greater than ten feet.  
22 Let me summarize the compatibility issue by noting that the unease felt by residents of  
23 the City Homes Townhouses in the face of multiple rezoning requests on three sides of  
24 their community is understandable. However, any expectation on their part that the  
25 neighborhood would not change over time or all that future development would follow  
26 their lead in terms of height and density, rather than the expectations of the sector plan  
27 was unrealistic. The surrounding neighborhood in this case contains buildings of widely  
28 varying age, height and bulk. In many cases completely different types of structures are  
29 juxtaposed against one another much the way the City Homes Townhomes confront the  
30 Edgemoor Condominiums and right next to that the subject property. Now I wish I could  
31 take credit for that eloquent analysis, but those are not my words. Those are the words  
32 of the Hearing Examiner's Office in the Triumph case, right down the block, G819, that  
33 this Council approved two months ago. I could not have said it better in describing that  
34 compatibility. The Hearing Examiner raised the issue of tenting. We feel he has  
35 misconstrued the concept. It's not achieved, say it couldn't be achieved by having 71  
36 feet where we have it. That's wrong. Tenting is not as rigid as saying that -- that it's not  
37 met by having our 71 feet next to the HOC building. The intent of the sector plan is to  
38 achieve tenting in a general sense. Looking at the density around the core decreasing  
39 and stepping down as you go out to the periphery but implicitly it allows variations in  
40 height within the plane of that text. The Hearing Examiner looks at tenting as a matter of  
41 rigid triangulation but nowhere in the CBD has that concept been applied in a literal  
42 sense nor would you want it to be. Taken to a literal extreme it would yield an absurd  
43 result. Any lower story building could effectively preclude any higher buildings further  
44 beyond the core. So if you built a 50 foot tall building on Woodmont Avenue, you would





September 19, 2006

1 be precluding something 55 or 65 feet to the west. That's nonsense. You would need  
2 some slavish adherence to the sequentiality of development one after the other in order  
3 to properly tent according to the Hearing Examiner. This is a -- a -- a mistake and you  
4 should ignore it. In conclusion the Planning Board and the planning staff both  
5 determined the project was compatible. The Planning Board is the author of the sector  
6 plan and best able to interpret what is consistent with the plan and compatible within the  
7 context of the plan. Nothing in the record suggests inconsistency or incompatibility other  
8 than lay testimony. There is no substantive evidence in the record. Only concerns  
9 expressed by residents who simply don't want a building built adjacent to their building.  
10 To which, as you could see in the drawing that you have in front of you and then this  
11 excerpt from the Planning Board staff report has these five blank walls of theirs facing  
12 this property. And in fact, our building only butts up against two and a half of those  
13 because the HOC building is the last next to it. There's no explanation of the  
14 inconsistency of the Hearing Examiner's position with the other conditions and  
15 approvals in the Bethesda CBD as evidenced by these other buildings. We urge you to  
16 follow the recommendations of the Planning staff, the ark, the Planning Board and  
17 approve the application and the development plan. The record is void of an substantive  
18 evidence that could justify any other conclusion. Let me close by emphasizing the entire  
19 purpose of the recent MPDU amendments was to encourage more affordable housing  
20 on the site and more flexibility in design to accommodate that housing. Most  
21 importantly, when you the Council approved the MPDU amendments you must have  
22 done so with knowledge of the implications and the effects that minor increases in  
23 height would have on the sector plan standards. This case exemplifies exactly what that  
24 legislation intended to accomplish. Thank you.

25  
26 Council President Leventhal,

27 Okay. Do we have the opponents of the application? Are you -- are you Mr. O'Bryon?

28  
29 David O'Bryon,  
30 I am.

31  
32 Council President Leventhal,

33 Thank you. Glad you're here. Please press your button, introduce yourself for the record  
34 and do you similarly want to reserve 5 minutes of your time or do you want to use the  
35 whole 20 minutes now? Oh, thank you. Okay.

36  
37 Jeff Zyontz,

38 It's the -- it's the applicant who has the ability to reserve for rebuttal.

39  
40 Council President Leventhal,

41 Oh, okay. Fine. So you have 20 minutes and when you're ready --

42  
43 Multiple Speakers,  
44 [INAUDIBLE]





September 19, 2006

1  
2 Council President Leventhal,  
3 And 20 minutes divided between the two of you so when you begin speaking, please  
4 introduce yourself for the record.

5  
6 David O'Bryon,  
7 Will do, and I'd like to reserve 3 minutes at the end for comment.

8  
9 Multiple Speakers,  
10 [INAUDIBLE]

11  
12 Council President Leventhal,  
13 I was told that I spoke in error, that I –

14  
15 David O'Bryon,  
16 --the end. I'm going to speak, then Brent Polkes going to speak and then at the end of  
17 our, at 18 minutes I'm going to come back.

18  
19 Council President Leventhal,  
20 Within the 20 minutes, you'll come back at the end?

21  
22 David O'Bryon,  
23 Yes.

24  
25 Council President Leventhal,  
26 Please proceed. Thank you.

27  
28 David O'Bryon,  
29 My name is David O'Bryon. I'm the President of City Homes of Edgemoor and I'm here  
30 today to represent the 29 homeowners that have invested over 30 million dollars based  
31 upon the sector plan and the community that they are buying into, an urban village. So I  
32 sat and listened to the learned Council on the other side, I was thinking of perhaps it  
33 was in Friendship Heights, when we talk about conformity to plans and things of that  
34 nature. When you address three areas: conformity, compatibility, and the ark question  
35 of a conflict. Relative to the, the Hearing Examiner's report we think it's a correct report  
36 that ought to be remanded back for further action. The homeowners were not involved  
37 at all with the County Planning Department at all and only came into the process during  
38 the Hearing Examiner process. So when arguments were articulated that everybody  
39 was in agreement at that stage, at the early stage, it was because we were not involved  
40 in – in that effort. As impressed as I am with the process I've gone through, I've been  
41 disappointed with some of the things that I've discovered going through it. I'm a private  
42 citizen here in the County, actually we've tried to get some legal counsel to represent us  
43 here and between various things, we've been through about 20 different law firms trying  
44 to find who are experienced in zoning that don't have a conflict in the case and so we're



September 19, 2006

1 here representing ourselves as citizens here in the County. The hearings -- correctly we  
2 believe to remand and contrary to the Council's advocacy letter that all of you were  
3 hand delivered, we have a difference of opinion here. The sector plan talks about an  
4 urban village, that's the old expression, like pornography, you -- you know it when you  
5 see it, and in the sector plan they put together a picture showing you what a urban  
6 village would look like, which has already been introduced into evidence here on the top  
7 picture of three and four story level apartment or townhouses. When this body had an  
8 opportunity to look at our block which is surrounded by Woodmont, Montgomery on the  
9 north, Arlington on the west and Hampton Lane on the east -- on the south, it chose to  
10 limit our development to 4 stories and within that development they had a whole list of  
11 things that we did in terms of trees that we were putting in, plantings that we were going  
12 to provide in the -- consistent with the urban village planting plan that's been cited as a  
13 guideline and we conformed to that plan and those of us who purchased in Montgomery  
14 County and in this area looked at the sector plan, were shown it by realtors as this is the  
15 sector plan. We recognize we're in an urban downtown area. We expect and anticipate  
16 development, that's what we had testified to when -- at the earlier hearing, and we were  
17 under the impression that there would be some consistency within the village vision that  
18 was planned in the sector plan. I think one of the things that's most distressing for us  
19 living here is that the 282 foot long, 71 foot building that's proposed for you all is really  
20 quite -- quite different from anything else on the block. To date there is nothing on the  
21 block that's over 4 stories. When our units were put in it took over, I think, 5 houses and  
22 increased the development six-fold and this would go exponentially beyond that on a  
23 block that's further away from metro and has no egress to metro except a longer  
24 distance away from us. It does front Arlington Road which says it should be at 3 stories,  
25 according to the zoning, and this building is adjacent to us and basically what hap --  
26 what would happen to us in this would be, and I'm moving a little bit into compatibility  
27 here, a 7 story building right above ours which would cut off our light, our air, the -- our  
28 plants that have been carefully planted at your -- at the County's direction would all die  
29 because of lack of air and lack of appropriate -- ambience of our whole lifestyle would --  
30 would -- would change from that. One of the issues that we had when we were trying to  
31 look at this, we would anticipate a 4 story building going up adjacent to us. That would  
32 be consistent with that. We think that would be consistent with the plan, consistent the  
33 way you've designed the whole block, the most recent development on the block was  
34 the one that's adjacent to us at Arlington Road. That's pictured in the bottom left corner  
35 of that picture, but I do find it very disturbing when we start talking about whether it's  
36 conformed -- conformed to the sector plan. I guess I have a different view. Montgomery  
37 County has always done the best practices. We've always had a really national vision of  
38 who we are and what we do and here we seem to have lost it with either a lack of  
39 leadership at the Park and Planning and I commend the Council for its actions in trying  
40 to get some leadership back and just hired Royce Hanson back when we had a lot of  
41 big national image that all the planning schools in the country talked about Montgomery  
42 County as an example. But to date, we've got Council Park and Planning that's all over  
43 the board. It's not fair to the homeowners who buy in, for example, if this were a private  
44 enterprise doing this and we've invested our 30 million dollars into different homes in



September 19, 2006

1 the area, the Federal Trade Commission would be all over you all for bait-and-switch  
2 opportunities because it's such an incredible difference from 4 stories to 7 blocking out  
3 part of your -- your light and air and we anticipated having more development along our  
4 -- our -- our -- our area and to find ourselves in a position here where we're having to  
5 defend ourselves against a high-rise building, is just beyond the pale. I've looked at the  
6 sector plan. I've looked at the pictures. They depicted what Bethesda's supposed to be.  
7 It's not supposed to be another Friendship Point. It's supposed to be an urban village, 3  
8 stories, 4 stories, that's what you all zoned us for when you zoned two-thirds of the  
9 block with City Homes and now you're coming in with a totally different plan that really  
10 touches the whole core of what you're doing in Bethesda. There are 23 different plans  
11 for development in Bethesda. Nobody's looking at the overall -- overall picture. You all  
12 aren't. When you're doing zoning changes, you look at sector by sector and there's got  
13 to be some accountability in this area so we would suggest to you that the false  
14 comparisons that are being made here, in my mind, would be that our development is  
15 not compliant or consistent with the TSR zone. I think we are. We zoned up and we  
16 added density which was part of the sector plan. They identified it. You all passed it.  
17 Park and Planning passed it and that's how you came up with the development for the  
18 developments that we've had on our block already. If this development was to be  
19 developed, its neighbor on the north and south would be less than 4 stories. Its  
20 neighbor to the east would be 3 stories, already testified to that. They're saying you've  
21 got a high-rise building of 7 stories as equivalent to 4 story buildings. To my way of  
22 thinking it's -- it's -- it's just off -- off -- off the -- off the charts. We think you should have a  
23 building, buildings there but they should be consistent with what's surrounding the area  
24 and I think in the Hearing Examiner's report on conformity, I think he noted what the  
25 sector plan said, he noted it correctly. I think in compatibility, I think the compatibility  
26 issue is just clear as a bell. There's not a question here that this is very different, almost  
27 twice as big as we are, 7 stories versus 4 and I think that in itself should lay back and go  
28 back for some for -- reconsideration. Now, relative to, and I'm going to leave a moment  
29 here for my colleague, I totally disagree with some of the arguments, I'm a proponent of  
30 MPDU's, I think it's a very positive thing and I think one of the issues that we get into  
31 with MPDU units in the County, we need to have people who, I have a niece who's a  
32 County teacher and I think we need to have housing for all of our -- all of our residents.  
33 For them to place additional MPDU units in the unit is wonderful but who's going to pay  
34 the -- who's paying for that? In the case here they're saying I need to go higher density  
35 to provide those and at the cost of all the neighbors without any justification for, I'm not  
36 getting compensated for that, but they're giving this all up. Somebody is taking from me  
37 to get personal gain on their side and I'm not getting any -- I'm losing part of my  
38 continuing home as a taxpayer as a homeowner in Montgomery County. They're going  
39 above what's demanded of them in order to get extra height and I think that's part of the  
40 reason why they're going for the extra height is to get the extra MPDU units, to get the  
41 extra height to sell more units and I think that's incompatible with what we're trying to do  
42 as well. I think we do need to have MPDU units in the County and I'm in favor of what  
43 they're doing here, in favor of the Housing Opportunities building as well as part of this



September 19, 2006

1 unit. And at this point I'd like to let my colleague Brent Polkes speak. He's also one of  
2 our homeowners.

3  
4 Brent Polkes,  
5 Good morning ladies and gentlemen of the Council. My name is Brent Polkes. I reside  
6 at 4808 Montgomery Lane in Bethesda and I am a resident of City Homes. How much  
7 time do we have left?

8  
9 Council Clerk,  
10 [INAUDIBLE]

11  
12 Brent Polkes,  
13 Okay. Uh, before I begin, I'd like to request that the people who are residents of City  
14 Homes and have an interest in opposing the request for remand please raise your  
15 hands. These are all people who are residents of City Homes and who took time out of  
16 their days, whether it be employment or their normal daily routine to attend the hearing  
17 because they felt it important for the Council to see their interest and their presence in  
18 this. Before I begin speaking about the ark committee and its meaning and purpose. I  
19 was here on August 1<sup>st</sup> when the Council decided to hear oral arguments today and  
20 during the course of my presence I heard several members of the County Council, most  
21 notably its President express concerns about the interests of the community being  
22 served and protected by the actions that the Council might undertake as it related in this  
23 case to redesigning a traffic route on Woodmont Avenue in relationship to another  
24 project. And one of my biggest concerns as it relates to the ark committee is that the  
25 very procedures that this committed undertakes specifically exclude any community  
26 involvement. They opposed hearings. They don't commit the input of the community  
27 and I believe that that is fundamentally unsound and inconsistent with the desires of the  
28 County Council if in fact it truly is interested in serving the public interest and particularly  
29 those in the community who are most impacted by things that are going on. In this  
30 particular instance the ark committee is made up of three people who I believe are  
31 appointed by the County Council, but I'm not 100 percent certain of that. Two of those  
32 members are Scott Newton who is the Executive Director of HOC and Elizabeth  
33 Davison who heads the Department of Community and Housing Affairs. On June 5<sup>th</sup> of  
34 2005 an agreement was entered into between the members who make up the Hampden  
35 Lane LLC group and the Department of Housing and Community Affairs and the  
36 Department of Community Housing and Affairs to -- a swap of lot 3 on Hampden Lane  
37 which was the original proposed site of the 12 unit MPDU and move that project to lot 5.  
38 Number one that was held or that was done without any community notice or  
39 notification, and in fact I believe it violates the very spirit of the community involvement  
40 desires. When the original lot 3 application to grant the TSR status, which would permit  
41 the 12 unit MPD construction on lot 3, was entered into, there was no opposition from  
42 the community and in part it was because, with lot 3 going to be built as a 3 or 4 story  
43 building that would house the MPDU units, it pretty much guaranteed that the remainder  
44 of the development along Hampden Lane would be consistent with the low-rise concept



September 19, 2006

1 of the second plan because with the 12 unit building in lot 3 it ensured that development  
2 of lots 1 and 2 and 4 and 5 can only be low-rise low-density which is in fact what was  
3 intended. The fact that this agreement was entered into without any community  
4 discussion or knowledge certainly in my opinion violates the very principals that were  
5 undertaken when you approved the TSR zoning for lot 3. But what makes this even  
6 more challenging is that in June of 2005 there was as part of this agreement a  
7 cooperation provision in which Mr. Newton and Ms. Davison were contractually bound  
8 to cooperate with the developer in every possible way that would ensure the facilitation  
9 and in fact the build-out of their project in return for certain considerations, one of which  
10 was that if the HUD grant which was originally obtained to fund the building on lot 3  
11 were no longer available that the developer would replace those funds. Whether or not  
12 that's consistent with the very heart and soul of the grant application in the first place is  
13 a horse of a different color. But the fact of the matter is when the ark committee granted  
14 the additional density and height to the developer both Scott Newton and Elizabeth  
15 Davison were contractually obligated, and in fact, would have been in breach of their  
16 agreement had they voted in opposition. And therefore if it's not a conflict of interest  
17 because out of necessity they were supposed to vote for this it certainly doesn't present  
18 the correct image of what I believe this County is striving to have as far as the public  
19 perception; because when you have two people who are predisposed to vote in favor of  
20 something or face being in violation of their contractual obligation, that sure sounds like  
21 a conflict of interest to me. I'd like to quickly go back to the Hearing Examiners  
22 reference to the County Council's ruling on April 12<sup>th</sup> in denying the application of G819  
23 which was the original application for Triumph Development and in denying that  
24 application in which the Hearing Examiner cites as being a specific part and parcel of  
25 his hearing, the County Council cited the concept of the urban plan -- .

26  
27 Council President Leventhal  
28 You may finish your sentence.

29  
30 Brent Polkes,  
31 Okay. It cited the concept of the urban plan and its inconsistencies with that both from  
32 the step down and its compatibility with the surrounding neighborhood.

33  
34 Council President Leventhal,  
35 Thank you.

36  
37 David O'Bryon,  
38 Do you have my two minutes?

39  
40 Multiple Speakers,  
41 [INAUDIBLE]

42  
43 Council President Leventhal,  
44 You have two minutes. Go ahead then.





September 19, 2006

David O'Bryon,

Thank you very much. I want to end where we started up. That we believe the Hearing Examiners report is the correct one. This case should be remanded back. It's got too many variables in it that require re-examination. We think compatibility is clearly, it doesn't reach that. They have the burden to get that and they haven't reached it. In the ark case I think you all have a decision. This is the first time the ark is coming for you. You have no information in the file on which to base what ever is economically justifiable or not because you have to idea of the underlying economics. If a partner in the building has sold his lot for 20 million dollars a piece and the builder has to build a hundred stories in order to build it to make it economically feasible, does that then mean that it's economically feasible only for the 115 levels high and then you'd have to accept it under the guidelines you have here. I think not. I think that's part of they underlying problem that you've got. They're not giving you the information you need to make an informed decision. Systemically I think the legislation might, I offer this in a good government concept here, but I think what you need to -- might want to reconsider is the application here. If you have parties to the case have taken money for the County, half a million dollars, and that vote is obligated by contract in this. You didn't intend that in legislation. You never expected that to come forward but I think it's something you need to reconsider in terms of how you do ark cases in the future when the County is a partner in the deal. It's not good government. It's not good practice. You need to. Second, is when we do have in the area of compatibility, I just want to make reference to one exhibit that's here as well. This is going to be right in front of us. Do I need to -- the mic?

Multiple Speakers,  
[INAUDIBLE]

Councilmember Prasiner,  
Turn that one near you.

David O'Bryon,

Okay. For the purposes here we're looking at exhibit number 36. The shaded part is how they're building , when it's right up to ours is how it's going to impact our building. It's just like this as if I'm a basketball player six foot seven who'd bring over a five foot two player. My home is going to disappear along with my light and the rest of my existence. That's what's going to happen in this development. This is not a 3, 4 story townhouse, urban village and that's what we're being presented with, you all are being presented with.

Council President Leventhal,

Okay. Thank you very much. Mr. Kominers, you have a few remaining minutes.

Bill Kominers,



September 19, 2006

1 Thank you. First, I would just like to point out that as the opposition noted when they  
2 looked at the master plan, the master plan doesn't say four stories. The master plan  
3 says 65 feet. It says it for the entirety of this block. It says 35 feet down in Arlington  
4 Road stepping up four that way but the entire block is 65 feet not four stories. And  
5 that's what has been done. You the Council have interpreted some of the things like the  
6 Edgewater High-rise as meeting that. The -- if the HOC project were not a part of this  
7 project and remained in the middle of the block you'd never achieve the sector plan TSR  
8 recommendations on the remaining parts of it. If the HOC was sitting in the middle the  
9 two pieces that were disconnected wouldn't be able to meet the standards for TSR. So  
10 you'd never get TSR there so you wouldn't implement this sector plan. It's only by virtue  
11 of making this swap that it's been able to accommodate the sector plan's  
12 recommendations for TSR in this area. With respect to the ark and HOC you guys  
13 established the process. The role of the ark is to determine the financial feasibility of  
14 the project without the extra height or with it. They have an independent consult to  
15 whom the applicant provided financial information on a confidential basis to look at that.  
16 Those advisors are independent. They have no involvement in the case, no involvement  
17 as a part of it in any fashion. They independently analyze the information, presented it  
18 to the ark and the ark then made the decision. They get technical information and input  
19 to the ark. The findings of the ark are advisory to the Planning Board solely on financial  
20 feasibility. Not on height or compatibility. The Planning Board still recommends -- looks  
21 at that and recommends it based upon examining the master plan. The increase in  
22 height and density as a result of the MPDU law was designed to accommodate the  
23 bonus density for providing MPDU's over the minimum requirement and that provision  
24 for the bonus has been in place for many years but has never really been able to be  
25 acted upon because there's not enough space in the envelope. We feel that on this  
26 basis if you look at the totality of the area, you look at the requirements of the plan, you  
27 look at what the urban village is as you the Council has established it heretofore, that  
28 this project is absolutely consistent with the vision of the urban village and it's absolutely  
29 compatible with this and as in that exhibit that was just on there, there's only a height  
30 differential of 20 -- excuse me, of 10 feet between the 55 foot top of the City Homes and  
31 the 65 and then to the 71 of this building. So, we would ask that you ignore -- reject the  
32 Hearing Examiner's recommendation and grant the project approval and the  
33 development plan. Thank you.

34  
35 Council President Leventhal,

36 Alright, thank you to the applicant and thank you to the opponents. I have got a number  
37 of questions and I see that other Council members do as well. I'd like to understand  
38 precisely as best we can, I know it's -- of a remand. How much time do we think it  
39 would take? What would we think might be the outcome in terms of possibly scaling  
40 down the size of the building and then what would that likely mean, understanding it's  
41 speculative? Just give us a range if we can as to what might come out of the Planning  
42 Board if it went back in terms of the number of units allowed and therefore the number  
43 of affordable units. I understand the answer is somewhat speculative but let's speculate  
44 a little bit. How long might a remand take? What might emerge from it? What would be





September 19, 2006

1 the size of that and what would be the effect of that and what would be the effect of that  
2 in terms of affordable units?

3  
4 Marty Grossman,

5 If that question is directed at me Mr. President, I would assume it would take at least  
6 four months for a remand because it would have to be calendared. I would expect that  
7 there would have to be a revision to the development plan which would then be  
8 reviewed by technical staff and the Planning Board if it wished to review it and then  
9 come back for a hearing. We would establish a hearing as soon as the revised  
10 development plan was submitted, so I'd say that sort of a delay. I can't estimate the  
11 number of units and I'm not even suggesting it would be fewer units. All I -- my point in  
12 asking for the remand is that this project -- I mean a picture is worth a thousand words  
13 here. You have to look at this project and see if this is the sort of low-rise urban village  
14 that is called for in the sector plan and contrary to what Mr. Kominers has indicated I did  
15 not rely solely on a sketch. There's language directly in the sector plan, page 82, which  
16 defines a low-rise urban village as buildings that "appear to be townhouses but actually  
17 are three to six floor buildings with apartments at each level".

18  
19 Council President Leventhal,

20 Is that in our packet? The language that you've just read.?

21  
22 Marty Grossman,

23 Yes. Absolutely.

24  
25 Council President Leventhal,

26 Can you give us the page please? And does the term low-rise appear in the sector  
27 plan?

28  
29 Marty Grossman,

30 It does.

31  
32 Council President Leventhal,

33 Okay. Can you point us to that?

34  
35 Marty Grossman,

36 Alright, it's circle 60. There's various quotes from the -- from the sector plan. On page 60  
37 there's a quote, first one's from page 5 of the plan. Creation of a high-density low-rise  
38 urban village "that steps down in height from 6 floors along Woodmont avenue to 3  
39 floors along Arlington Road...

40  
41 Council President Leventhal,

42 But doesn't specify how many floors on Hampden Lane.

43  
44 Marty Grossman,



September 19, 2006

1 No. But this is on -- this is within, Hampden Lane is within the TSR area which is the  
2 area that's being described in the sector plan, and I'm I looking for, I know I quoted it  
3 somewhere in here, this page 82 from the sector plan, but in any event it is in the sector  
4 plan at page 82 the quote that I read earlier which is part of the record.

5  
6 Council President Leventhal,  
7 Okay.

8  
9 Marty Grossman,

10 And, so that was the -- one of the concerns, that is as whether or not there was truly  
11 compliance with the vision of the sector plan and the other one is this compatibility issue  
12 and a great concern because we knew although penthouse is not counted in the height  
13 of 71-foot it adds an additional 15 feet I think it is to the height of the building and in  
14 terms of what the impact of --- on the residences directly to the north, that is the  
15 townhouse development here, City Homes, it would have great impact it appears and as  
16 is apparent from exhibit number 36 which is here. So these are issues which I felt didn't  
17 require a denial because I felt there could be improvement although I know that the  
18 applicant has made efforts to improve compatibility here by various things they have  
19 done, but. I felt that this could be improved if in fact the applicants took another shot at  
20 getting closer to the vision of the sector plan and improving compatibility.

21  
22 Council President Leventhal,  
23 Could I just, Mr. Grossman, could I get back to my question though? You said that the  
24 likely effect of a remand would be about four months in delay, the applicant would have  
25 to redesign the project, the project would go back before the Planning Board, the  
26 Planning Board would reach some conclusion and all of these things you think would  
27 happen in about four months.

28  
29 Mr. Grossman,  
30 Four to six months, and it may be longer.

31  
32 Council President Leventhal,  
33 Four to six months, okay. It's likely in the course of that, I mean if the Council were to  
34 send the signal today that by remanding we signify to the Planning Board that we're  
35 unsatisfied with the application, it is likely that the Planning Board, since most of the  
36 discussion has been about height, and since there's some dispute about what height is  
37 allowed under the sector plan, I don't thin that question is definitively answered  
38 anywhere, I mean it's a matter of interpretation, but it's likely that the Planning Board  
39 would ask the applicant to build a shorter project, let's assume.

40  
41 Marty Grossman,  
42 I think that's fair.

43  
44 Council President Leventhal,



September 19, 2006

1 And it's likely that that would lead to the construction of fewer units, let's assume, and  
2 that would then lead to the construction of fewer MPDU's. I'm just playing out a logical  
3 sequence of events here. Is there anything I'm missing?  
4

5 Mr. Grossman,

6 Well, some of the things that applicant has suggested and done in their plan, might not  
7 be necessary if the height was shorter and might – might allow for getting back those  
8 units. In other words...  
9

10 Council President Leventhal,  
11 Things like what?  
12

13 Marty Grossman,

14 They made indents in the north side of the building which are invisible on this, but some  
15 of those indents might not have to exist all the way up or whatever the case may be.  
16

17 Council President Leventhal,  
18 Okay. So you're saying that...  
19

20 Marty Grossman,

21 There may be other things. I just can't -- I'm not qualified and I don't think there's a  
22 record in which we can make that assumption as what would happen to the number of  
23 units.  
24

25 Council President Leventhal,  
26 Okay, I mean. You haven't worked with an architect I assume, so you don't know  
27 whether it's possible to have the same number of units in a shorter, squatter design.  
28

29 Marty Grossman,

30 It's just not part of the record and I don't have a basis for evaluating.  
31

32 Council President Leventhal,

33 Okay. How many stories is that? It doesn't -- The top isn't even indicated. I count eight  
34 just in the diagram and there's not even a ceiling on it. It sort of cuts off at the beginning  
35 of the drawing. So, even -- even in the sector plan it looks like the urban village  
36 anticipates at least one tall building in this mythical image of what an urban village might  
37 look like.  
38

39 David O'Bryon,

40 I don't know whether that's right. That wasn't directly introduced in the case from the  
41 sector plan as I recall, so.  
42

43 Council President Leventhal



September 19, 2006

1 And we don't know what street. I mean this is just -- this is the land of oz here. This  
2 design. This doesn't describe Hampden Lane and Woodmont Avenue, right? Mr.  
3 O'Bryon, do you want to comment on that?

4  
5 Unknown Speaker,  
6 I can give it -- That is Montgomery Lane that...

7  
8 Councilmember Praisner,  
9 It is on.

10  
11 David O'Bryon,  
12 Oh, am I on?

13  
14 Unknown Speaker,  
15 And I don't know what that...

16  
17 David O'Bryon,  
18 That is Montgomery Lane that runs the length of the building back into the horizon  
19 there. The road running at the front is Woodmont Avenue. The building that high-rise  
20 would be across the street from the metro and would be consistent with the tent concept  
21 that you're talking about here. The property that's at question here is on the far end on  
22 the other side of the block, so you go all the way to the end of that block and on the left  
23 hand side facing Arlington Road is this Hampden project.

24  
25 Council President Leventhal,  
26 Okay. Do the applicants dispute the opponents' contention about blocking light? What  
27 is your view about that? We've heard the residents of City Homes say that the  
28 construction of the applicants proposal would substantially reduce the light in their  
29 homes.

30  
31 Bill Kominers,  
32 I'm looking for a plan Mr. Leventhal. Actually, if you look in the -- if you look in the  
33 Hearing Examiner's report on page 24, I'm sorry, I don't have this...if you look on that, if  
34 you look on page 24 on that diagram it's a planned view of the building and it shows on  
35 the north side two large indentations which are designed to line up sufficiently with the --  
36 with these two gaps in the existing -- these are the -- give you a complete answer to  
37 your question. These the five rows of City Homes townhouses. Running west to east,  
38 this is the first one, this is the second, the third and the fourth. The proposed building  
39 only runs over two and a half of them. So in that area where it is opposite these two  
40 spaces between, the building has been cut out so as to allow more op -- you know to  
41 be essentially to set back from that opening to allow light to get in there. Second, the  
42 building has, and I think it's on the next page of the report, shows a roof plan down at  
43 the bottom that show that the building has also been stepped backwards from the north  
44 to south so that it's lower on the north stepping up to the south to again try and pull itself



September 19, 2006

1 away from the City Homes townhouses in that fashion. So both of those measures  
2 have been done to try and address that issue. Again, the Planning Board obviously felt  
3 that subject to its review its site plan review was sufficient for the rezoning, but  
4 obviously would be detailed further at site plan review and in our opinion that was  
5 appropriate to resolve -- to address that question at this stage of the process.

6  
7 Council President Leventhal,

8 Okay. I'm going -- I have one last question for this round and other Council members  
9 have been waiting. I'm still trying to get a handle, is there any way to estimate the effect  
10 of the remand upon what might be the number of units in the new application and  
11 therefore the number of affordable units on the application? Is there any way to guess  
12 what might occur if we voted to remand today?

13  
14 Bill Kominers,

15 I think you stated it very clearly and correctly.

16  
17 Council President Leventhal,

18 There will be fewer units, fewer affordable units, but we don't know how many.

19  
20 Bill Kominers,

21 Correct.

22  
23 Council President Leventhal,

24 Mr. Subin.

25  
26 Councilmember Subin,

27 Thanks Mr. President. I'd like to follow up on the President's question of light. If I look  
28 on the map which is on page, or the diagram on page 24 which is circle 52 and I look  
29 back at this, it appears to me that the fronts and backs of the townhouses are facing  
30 east and west.

31  
32 Bill Kominers,

33 Correct. If you, I have a picture of this. This is looking from Hampden Lane.

34  
35 Councilmember Subin,

36 Right. Hampden Lane is on the south.

37  
38 Bill Kominers,

39 So, you're looking north, in this picture the faces of the townhouses are on the east and  
40 west.

41  
42 Councilmember Subin,

43 Okay. And then Edgemoor Lane can -- if it continued would be on the north side of all of  
44 those so when the sun --



September 19, 2006

1  
2 Marty Grossman,  
3 Not Edgemoor.

4  
5 Councilmember Subin,  
6 Montgomery Lane. Okay, I'm sorry.

7  
8 Multiple Speakers,  
9 [INAUDIBLE]

10  
11 Councilmember Subin,  
12 I had looked at something before that said that Edgemoor was coming in - then as the  
13 sun, you'll get the morning light on the Woodmont Avenue sides of those homes and  
14 then if your -- however the angle is, if you're stepped up on the east side of the  
15 proposed facility, as the sun comes around it is still going to hit most of those balconies  
16 except for some period of time during the day, and as it swings back around you're  
17 going to get a southwest sun in the mid to late -- in the mid afternoon and a westerly  
18 sun in the afternoon that would not be impeded by the proposed development.

19  
20 Marty Grossman,  
21 That technical analysis is not in the record, Mr. Subin. There is, in the record we have  
22 the complaints of the City Homes residents that they would not get the light because of  
23 their southern exposure.

24  
25 Councilmember Subin,  
26 Well, you can go technical analysis or not but you still addressed it in the report in terms  
27 of the light.

28 Marty Grossman,  
29 Based on the record that I have.

30  
31 Councilmember Subin,  
32 Based on the record.

33  
34 Marty Grossman,  
35 I think Mr. Subin -- .

36  
37 Councilmember Subin,  
38 Okay, well, you know what? If you're going to have an objection then let me restate  
39 that. The only times then that there would be any blockage of light, since the greatest  
40 impact of the blockage of light would be sometime between 11:00 a.m. and 2:00 p.m.  
41 which would be somewhere in the mid afternoon which would be when the sun is  
42 swinging in from the south. And as it moves, or as we move, as the earth moves, then  
43 there would be less and less impedance from about mid afternoon until sunset.



September 19, 2006

1 Marty Grossman,

2 I don't know if there's enough in the record to reach exactly that kind of conclusion. We  
3 do note there's enough to -- that there is going to be some problem.

4  
5 Councilmember Subin,

6 I mean, you can take the equivalent [INAUDIBLE] what would be the equivalent notice  
7 of judicial notice here?

8  
9 Multiple Speakers,  
10 [INAUDIBLE]

11  
12 Cliff Royalty,

13 I was thinking you could probably take judicial notice of the path of the sun. [Laughter]

14  
15 Councilmember Subin,

16 I will take, If you take judicial notice of the path -- you take Council-matic notice of the  
17 path of the sun.

18  
19 Bill Kominers,

20 Mr. Subin, I think the other thing that you should take Council-matic notice of because  
21 it's clear from this picture and from the -- from that other diagram of the 5 buildings, is  
22 that clearly it was expected with those blank walls that there was going to be another  
23 building built up next to these.

24  
25 Multiple Speakers,  
26 [INAUDIBLE]

27  
28 Councilmember Subin,

29 I think that's putting in an intent that would not -- that is not clear. I mean, there could be  
30 a number of reasons that those facilities were laid out that way. I mean, one could  
31 almost make an assumption that they want -- if you wanted to, one could assume an  
32 intent they wanted to block out the light. I don't know if there's anything -- I'll switch over  
33 to the, and agree with the Hearing Examiner that in terms of that, there probably isn't  
34 anything in the record that would get you to that approach. The fact is they're laid out  
35 the way they're laid out and the afternoon -- that southerly exposure which is mentioned  
36 in here is when you would get the maximum impact of both the new development and it  
37 would hit not windows but would hit those blank walls and the roof.

38  
39 Bill Kominers,

40 I agree. I guess my point was that if you built a building on the applicant's property that  
41 was not 71 feet at its highest point over two-thirds of the building, but was 65 or was  
42 even 55, the same height as the tops of those townhouses, you'd have the same effect.  
43 The issue that you're -- that is really before you on that aspect is the effect of the  
44 difference between the height proposed by the applicant over a portion of that and what





September 19, 2006

1 could be done within what is clearly the bounds of the sector plan of the 65 feet or even  
2 the 55 feet of those buildings. The applicant has tried to accommodate a recognition of  
3 that issue by cutting out the portion of the building to accommodate that which is as a  
4 result of the negotiation attempt to address that area of concern. Obviously the Planning  
5 Board would look at it again at site plan review.

6  
7 Multiple Speakers,  
8 [INAUDIBLE]

9  
10 Council President Leventhal,  
11 Mr. Subin, Mr. O'Bryon, Mr. Kwaitz wanted to comment on the issue of light.

12  
13 Councilmember Subin,  
14 Sure.

15  
16 David O'Bryon,  
17 I think ours is the same point. We're taking judicial notice of light and things of that  
18 nature the Council might take judicial notice that with pending development right now  
19 that you all approved we are in the middle of becoming a canyon of high-rises on all  
20 sides, three sides of us. I'm talking about light. Thank you.

21  
22 Councilmember Subin,  
23 I think you've got a valid issue there, but if that is the case that you end up being a  
24 canyon, then at the end of the day so to speak, this building wouldn't have any more  
25 impact than any buildings that are south of Hampden Lane. That whole area is going to  
26 be built up. Then the impact there would be as bad if not worse.

27  
28 David O'Bryon,  
29 May I?

30  
31 Councilmember Subin,  
32 Yes sir. I'm trying to -- I'm trying...

33  
34 David O'Bryon,  
35 In the lowest area of the land in terms of sea level height is at Woodmont. Woodmont is  
36 where the Triumph project is and it meets with the tent concept that has been the  
37 bulkhead of all the development in Bethesda for 30 years, since Royce Hanson was  
38 Chairman of the Planning Board the last time and this would bring it -- you bring it down,  
39 then you have 3 and four stories, then you've got it coming up again to 71 feet plus the  
40 15 feet on top of that so it would be a difference and that would be the distinction that I  
41 would draw.

42  
43 Councilmember Subin,



September 19, 2006

1 Well, I think that is an excellent point and that's a neat segue into my next question. If  
2 there was a property swap, why can't you flip-flop these two so that the subject property  
3 is at the corner of Woodmont and Hampden and the HOC property is at the corner of  
4 Arlington and Hampden?

5  
6 Bill Kominers,  
7 We don't own the property at the corner of Woodmont and Hampden. That's the  
8 Triumph Building.

9  
10 Councilmember Subin,  
11 Well, but isn't that where the HOC – where's the HOC again.

12  
13 Bill Kominers,  
14 There's -- the sequence from Woodmont Avenue is there's the Triumph site then there  
15 are two existing apartment buildings that are not the subject of either application, then  
16 are the -- there's the property of the these applicants with the HOC building first and the  
17 remainder stepping down to...

18  
19 Councilmember Subin,  
20 So then the HOC building is in the middle of the block.

21  
22 Bill Kominers,  
23 Well, It's in the middle – it's at the end of this property but it's still in the middle of the  
24 block.

25  
26 Councilmember Subin,  
27 But it's in the middle of the block?

28  
29 Bill Kominers,  
30 Correct.

31  
32 Councilmember Subin,  
33 Okay.

34  
35 Multiple Speakers,  
36 [Inaudible]

37  
38 Councilmember Subin,  
39 Let me re-ask the question of why can't you flip those two? It looks like there's a -- I  
40 can't tell from these pictures the size but it looks like there's a facility of roughly equal  
41 size at the corner of Hampden and Arlington which would move the property down and  
42 closer to – to Woodmont and Hampden and HOC would get its building and the  
43 applicant would get its. I understand that you'd have to go back but I'm simply asking  
44 the question.



September 19, 2006

1  
2 Council President Leventhal,  
3 So instead of HOC being at the corner under what Mr. Subin is proposing, HOC would  
4 abut the City Homes, am I right, Mr. Subin?

5  
6 Bill Kominers,  
7 HOC abuts the City Homes.

8  
9 Councilmember Subin,  
10 HOC abuts them now, Mr. President and it's..

11  
12 Council President Leventhal,  
13 So you would put HOC in the...

14  
15 Councilmember Subin,  
16 In the middle. It's that white building next to the third -- .

17  
18 Council President Leventhal,  
19 No, but I mean under the -- where is HOC under the proposal, it's at the end, which  
20 end?

21  
22 David O'Bryon  
23 The HOC building under the proposal is the 5th building up off of Arlington Road. It's  
24 halfway up the block. It's actually at the crest of the hill.

25  
26 Marty Grossman,  
27 It would be in lot 5 on the...

28  
29 Bill Kominers,  
30 This is the aerial of Montgomery Lane, Hampden Lane, Arlington, and Woodmont.  
31 Subject property including the HOC building lots 1, 2, 3, 4 and 5. These two, 6 and 7  
32 are the 2 three story apartments and the Triumph property is here at the end of the  
33 block. The HOC building is comparable in height to the two existing apartment buildings  
34 and if you swapped it the other way and pushed the rest of the building back and you  
35 can see from this diagram you'd be pushing it this way so you'd actually be having an  
36 impact more of the City Homes if you did that than that one. Right now the HOC  
37 building is here. That's part of what provides this gap.

38  
39 Councilmember Subin  
40 How long has HOC had that?

41  
42 Multiple Speakers,  
43 [INAUDIBLE]



September 19, 2006

1 Councilmember Subin

2 I mean, I tried looking at --you had the zoning history but there isn't a facility history.

3  
4 Marty Grossman,

5 They had lot 3 in a -- which was originally the Edgemoor 4 and at the very beginning of  
6 the report it describes the history of how that was transferred over from -- .

7  
8 Councilmember Subin

9 I missed that. I got into the factual background and the zoning history.

10  
11 Bill Kominers,

12 I believe the report indicates that that property was originally to be 3 townhouses as  
13 MPDU's for the Edgemoor Project and that as a part of negotiations between the  
14 developer of the Edgemoor Properties, the HOC and the County, that the transfer was  
15 made and the change in use from the 3 townhouses as MPDU's to the transitional  
16 housing to 12 units for that.

17  
18 Marty Grossman

19 Yeah, circle 32, lot 3 was conveyed to the County in April of 2004.

20  
21 [INAUDIBLE]

22  
23 Bill Kominers,

24 Yeah, I was going to say, Mr. Engel here if you'd like to hear from him on that particular.

25  
26 Councilmember Subin

27 If we could get that, yes.

28  
29 Peter Engel,

30 I'm Peter Engel with the Housing Opportunities Commission. We have not operated the  
31 property at all, so DHCA, Department of Housing and Community Affairs continues to  
32 own it. We're interested in developing on that site. We did do plans for the original site.  
33 We have a building that was designed and ready to go. We moved that building to the  
34 new site. We did do some research into the ability to just take that set of plans and  
35 move it. We've not looked at all at what would happen to move it to the corner and I  
36 think there would probably be more impact on the building by changing it to that site  
37 which would mean additional work and review for us on that. I can't tell you how much  
38 impact. We haven't looked at that at all.

39  
40 Councilmember Subin,

41 It's being operated now and occupied?

42  
43 Peter Engel,



September 19, 2006

1 No. It's vacant I believe currently and the building that was there was demolished so we  
2 don't own it, we don't operate it.

3  
4 Multiple Speakers,  
5 [INAUDIBLE]

6  
7 Marty Grossman,  
8 The buildings there are depicted in the report, there are..

9  
10 Councilmember Subin,  
11 Well, wait a minute. How accurate is this picture? I mean, you're giving us an exhibit  
12 and I'm hearing it was there or it's not there, maybe it's there, maybe it's not there.

13  
14 Peter Engel,  
15 No. I was mistaken.

16  
17 Councilmember Subin,  
18 How accurate is this picture? How accurate is this? How recent was this--?

19  
20 Unknown Speaker,  
21 I think that was just taken.

22  
23 Councilmember Subin,  
24 Aerial taken?

25  
26 Unknown Speaker,  
27 I think that's a recent picture, Mike.

28  
29 Unknown Speaker,  
30 I don't know.

31  
32 Unknown Speaker,  
33 Okay. Thank you.

34  
35 Bill Kominers,  
36 All five buildings on the subject property are still there at least as of yesterday when I  
37 drove by. I can't tell you since then.

38  
39 Councilmember Subin,  
40 Okay. That's about as recent as we're going to get.

41  
42 Marty Grossman,  
43 They were all depicted in a front view.



September 19, 2006

1 Unknown Speaker,  
2 When I walked my dog this morning they were still there too.

3  
4 Councilmember Subin,  
5 That's even more recent than we're going to get.

6  
7 Marty Grossman,  
8 They were all depicted on a front view on Circle 40. You'll see all the lots, the houses  
9 that are on the lots currently are depicted lots 1 through 5.

10  
11 Councilmember Subin,  
12 And how tall is that, is that a parking structure or an office building? That white...

13  
14 Bill Kominers,  
15 That's the, that Mr. Subin -- I'm so glad you asked that question. This building right  
16 here.

17  
18 Councilmember Subin,  
19 I wish you hadn't said that. I'll be in the paper or in the letter or an e-mail.

20  
21 Bill Kominers,  
22 That's the low-rise Edgemoor residential building.

23  
24 Councilmember Subin,  
25 And how tall is that?

26  
27 Bill Kominers,  
28 46 feet.

29  
30 Brent Polkes,  
31 That's exactly what we anticipated we were going to get when we bought our homes on  
32 any development along Hampden Lane.

33  
34 Bill Kominers,  
35 And that area in the sector plan calls for a height of 35 feet.

36  
37 Councilmember Subin,  
38 Okay, well then why is that more objectionable than these other buildings because it  
39 looks like -- it looks to me like that would have a far greater impact on light than -- .

40  
41 Unknown Speaker,  
42 We're four stories, they're at four stories.

43  
44 Councilmember Subin,





September 19, 2006

1 Right. But the folks are looking out their windows right straight at this building instead of  
2 the backs of buildings where the subject property would go.

3  
4 Unknown Speaker,  
5 I'm not sure of your question.

6  
7 Councilmember Subin,  
8 If -- if you are taking the last row of houses -- .

9  
10 Unknown Speaker,  
11 Correct.

12  
13 Councilmember Subin,  
14 -- especially down in the lower floors, they are look straight into this building. So the  
15 impact of that building, it would seem to me, is far greater because looking out your  
16 window you see a building; whereas, the rest of these, whereas the subject property is  
17 just looking at the sides of three rows.

18  
19 Brent Polkes,  
20 It doesn't have the affect of dwarfing our project which is going to be the case if this  
21 building is built on Hampden Lane and as a result as the sun moves across the sky, we  
22 don't see the impact of air and light from a 46-foot building. We absolutely would from a  
23 building that is going to be 71 feet plus the 15 foot penthouse which is going to take up  
24 more than 50 percent of the roof area which would now put it 30 feet above the highest  
25 point of our townhomes.

26  
27 Councilmember Subin,  
28 How -- how tall are the buildings going to be on the south side of Hampden Lane?

29  
30 David O'Bryon,  
31 Across the street in Hampden Lane there is one and two story commercial.

32  
33 Councilmember Subin,  
34 What does -- what does the plan allow for?

35  
36 Brent Polkes  
37 By the Council's very definition and its ruling on the initial Triumph application in April of  
38 2005, it said that the step down pattern is important to -- to preserving the character of  
39 buildings and the step down in height must go from north to south and east to west.  
40 With a 65-foot building at the corner of Hampden Lane and Woodmont Avenue, which is  
41 the eastern most part of the site, and it states here in your own report that in order for it  
42 to be compatible with the sector plan, that you're looking for a tenting effect which  
43 creates a step down from a height of 65 feet at Woodmont Avenue down to 35 feet at  
44 Arlington Road.



September 19, 2006

1  
2 Councilmember Subin,  
3 Can those – can – can the three sites moving west from Woodmont and Hampden be  
4 redeveloped to a higher height as part of the step down?

5  
6 David O'Bryon  
7 Which – which ones are you looking at?

8  
9 Councilmember Subin,  
10 Starting with the Triumph building.

11  
12 David O'Bryon  
13 Right.

14  
15 Councilmember Subin,  
16 And then the next two, I mean if you move west.

17  
18 David O'Bryon  
19 If you move west after the –

20  
21 Multiple Speakers,  
22 [INAUDIBLE]

23  
24 Councilmember Subin,  
25 Can they be redeveloped?

26  
27 David O'Bryon  
28 The – the apartment houses, yes, on Hampden Lane. They would be, those should be,  
29 they're 3 stories now..

30  
31 Councilmember Subin,  
32 To what height?

33  
34 David O'Bryon  
35 It'll be debatable under the tent concept, they'd be lower than Triumph.

36  
37 Bill Kominers  
38 Mr. Subin, you — you — the Council approved the Triumph application at I think 73 feet,  
39 and so the master plan calls for the rest of that block all to be up to 65 feet at – at least,  
40 so --

41  
42 David O'Bryon,  
43 That what the master plan says, though.



September 19, 2006

1 Unknown Speaker,  
2 No, it's not what the master plan says.  
3  
4 Marty Grossman,  
5 It doesn't say that block at 65 feet it says to drop off 35 feet along Arlington Road.  
6  
7 Unknown Speaker,  
8 Right.  
9  
10 Unknown Speaker,  
11 We've got – we've got a property that starts at Arlington Road here.  
12  
13 Multiple Speakers,  
14 [INAUDIBLE]  
15  
16 Councilmember Subin,  
17 So, you're going from 73 feet to 35 feet?  
18  
19 Unknown Speaker,  
20 Actually for the record it's only 70 feet.  
21  
22 Councilmember Subin,  
23 Okay 70 feet.  
24  
25 Unknown Speaker,  
26 It's half 60 and half 70, of the building that you've approved for Triumph.  
27  
28 Bill Kominers,  
29 And on the south — and on the south side  
30  
31 Councilmember Subin,  
32 Is that road sloping down towards Woodmont? Does –does Hampden slope down?  
33  
34 Bill Kominers,  
35 Yes. It drops about 12 feet through the course of this project.  
36  
37 David O'Bryon,  
38 Right.  
39  
40 Unknown Speaker,  
41 --and through this site.  
42  
43 Brent Polkes,



September 19, 2006

1 And at its highest point toward Arlington – at it's highest point on Hampden Lane, this  
2 building as its proposed would actually be taller than the Triumph project on Hampden  
3 Lane because of the difference in elevation at its highest point.

4  
5 Councilmember Subin,

6 Right, well, here is what I'm trying to get at. And – and – in and vision. You make a good  
7 point about the light. With that elevation even with a step down, the step down does not  
8 -- when you --when you measure the height of the building, the height of the building  
9 doesn't start at the bottom of the elevation. It's from the ground in front of that building.  
10 So your -- Hampden Lane is coming like this?

11  
12 Bill Kominers,  
13 Correct.

14  
15 Councilmember Subin,  
16 And you have 73 feet here.

17  
18 Unknown Speaker,  
19 60 and 70.

20  
21 Councilmember Subin,  
22 70 feet here -- I'm sorry, but even if this building is – I mean, let's just use a number of  
23 60, it's still going to be relative to Triumph. It's still going to be here.

24  
25 Unknown Speaker,  
26 That's right.

27  
28 Councilmember Subin--and you're – you're – you're going to get, according to plan, a  
29 blocking out of the light for your two eastern most rows of houses.

30  
31 Bill Kominers,  
32 And if the — and if the redevelopment of those two apartment buildings were to come in  
33 at 65 feet below the --

34  
35 Councilmember Subin,  
36 -- and the elevation is 12 feet then 65 plus 10 or 11, because it looks like it stops right  
37 about at the end of the third building.

38  
39 Brent Polkes,  
40 The Council needs to consider the size of the lot that is currently occupied by that 3  
41 story building and look at what the FAR and density would actually permit and there's no  
42 way that you could construct a 65 foot building on that site.

43  
44 Councilmember Subin,



September 19, 2006

1 Well, but somebody could assemble those two properties.

2  
3 Brent Polkes,  
4 There's not two parcels, there is only one.

5  
6 Marty Grossman,  
7 There's two parcels but the question of whether or not they can be assembled to have  
8 enough area to qualify for the TSR zone is something else and that's what's  
9 recommend in that area. So that's, whether they can be developed that way is unclear.

10  
11 Pat Harris,  
12 If I could interject something regarding the height Pat Harris, Holland and Knight. In fact  
13 in measuring the height of the building the applicant did not take the height which they  
14 would be permitted to take under the zoning ordinance definition of height or the corner  
15 lot – corner property. In fact, what we did was we sort of self censored ourselves  
16 effectively to take a more restrictive height knowing that Park and Planning has  
17 sensitivities to our height these days.

18  
19 Unknown Speaker,  
20 Oh sure.

21  
22 Pat Harris,  
23 In fact what we did was, we put the entire property and took the middle of the property  
24 and that was our measuring point which ended up reducing effectively the height by 6 or  
25 7 feet so if you were taking a technical read of the height really we're below 65 feet.

26  
27 Bill Kominers,  
28 In other words we used a more conservative than the more favorable possible point  
29 from which to measure.

30  
31 Brent Polkes,  
32 I'm sorry, but to put it in simplest terms if you drew a straight line from the highest point  
33 of your proposed building and extended it to Woodmont Avenue, would your building be  
34 higher than the 70-foot Triumph building?

35  
36 Bill Kominers,  
37 I don't know the answer to that.

38  
39 David O'Bryon,  
40 The answer is yes it would be.

41  
42 Bill Kominers,  
43 I don't – I don't think so  
44



September 19, 2006

1 David O'Bryon,  
2 I walk it every day -- I walk through, anyway that's not in the records.

3  
4 Bill Kominers,  
5 That's not in the -- that's not in record, I mean, I think the important thing is that the  
6 building steps down as it's called for toward Arlington Road which calls for 35 feet. The  
7 building is 33 feet at Arlington Road. It steps up to 33, it steps up to 62 and then it steps  
8 up to 71 as it goes to the east and because the HOC building is placed on the eastern  
9 side, it only overlaps, as I said, two halves of these -- of the townhouses and only one of  
10 those -- only between -- only in one of the gaps between those townhouse is there any  
11 green space, landscaping and so forth. The other two are -- are driveways and the  
12 accesses to the parking underneath.

13  
14 Councilmember Leventhal,  
15 Mr. Subin --

16  
17 Multiple Speakers,  
18 [INAUDIBLE]

19  
20 Councilmember Leventhal,  
21 Okay. Mrs. Praisner.

22  
23 Councilmember Praisner,  
24 Alright. Yeah, just a comment first to the residents of City Homes. As one of the drafters  
25 of the creation of the ark I agree that nowhere in our conversations of the concept was  
26 there a discussion of how the ark would interact if the ark were the property owners or  
27 parties of interest in the process. And it is something that one would need to look at.

28  
29 Unknown Speaker,  
30 Thank you.

31  
32 Councilmember Praisner,  
33 Is there any discussion anywhere then of the issue of determination of conflict of  
34 interest from a standpoint of the County Attorney or anyone, Mr. Grossman in this  
35 discussion?

36  
37 Marty Grossman,  
38 The only discussion of it was raised by folks at the -- at the hearing and I discuss it in  
39 my report in a long footnote, page 36 of the --

40  
41 Councilmember Praisner,  
42 Yeah, I -- I've seen the footnote but, so, the only discussion is there and -- and your  
43 consideration of the issue was not beyond that because you don't have a copy of  
44 whatever was written for the County Attorney, etc. Is that correct?





September 19, 2006

1 Marty Grossman,

2 That's correct. I was -- I was informed that the -- that there was just a decision that it was  
3 not -- there was no conflict personally with Ms. Davison because she didn't have a  
4 financial interest but they didn't reach the more global issue that we're discussing here  
5 today.  
6

7 Councilmember Praisner,

8 Right. And -- and the question as I understand it from the -- from the community  
9 members is not an issue of personal gain but an issue of conflicts.  
10

11 David O'Bryon,

12 Correct. We're not making any aspersions upon anybody there personally or anything  
13 like that at all. I think it's a question of good governance. It's something that wasn't  
14 anticipated when the law was made. The -- the problem that you all have, this is  
15 important for you all to do it now because it's -- they've only had two cases. One is this  
16 case and one is the Triumph case and in -- in--has there been a third one now?  
17

18 Pat Harris,

19 Oh, we've had lots of them.  
20

21 David O'Bryon,

22 I was told we were the first case out the door.  
23

24 Pat Harris,

25 Yes but you weren't -- you -- there have been many since.  
26

27 David O'Bryon,

28 Since?  
29

30 Pat Harris,

31 Yes.  
32

33 Councilmember Praisner,

34 The question though may relate to what's been in front of the Council for --  
35

36 David O'Bryon,

37 My concern--  
38

39 Councilmember Praisner,

40 That's different than the committee's, ark's operations, it's a question of the Council  
41 seeing any reference to the ark in a rezoning case.  
42

43 David O'Bryon,  
44



September 19, 2006

1 -- and rezoning, and I guess one of the things I'd like for 20 seconds here. The issue  
2 that comes up if I'm in a deal with Mr. Polkes and I'm going to -- we're going to sell our  
3 property to Mr. Leventhal, and he's going to buy the property for 20 thousand --20  
4 million dollars, our basis might be 3 million dollars, but if the economic basis upon the  
5 deal that he's going to put together to build a high-rise is based upon him spending 20  
6 million dollars for that property, the economics of the deal and I'm now -- we're now sub  
7 partners of Mr. Leventhal in this real estate development deal, and I-- I think this is fine  
8 to do, it just -- it should be on the record someplace. I'm not into people's personal  
9 business and I understand the requirements here and I think everybody has operated  
10 aboveboard in that case but what happens is the underlying economics may work if the  
11 property is sold at 6 million dollars to the -- to the LLC but it might not work at 20 million  
12 dollars. As for the -- the only thing you know is he has looked at it, it's 20 million, It's not  
13 economically feasible if it doesn't work, but you have no idea with the information that's  
14 provided back so I think the ark might be able to do is provide some semblance of  
15 assurance within that theory.

16  
17 Councilmember Praisner,

18 Well, the issue of what the ark does or does not do, is not I think the question that was  
19 raised.

20  
21 David O'Bryon,

22 That's correct.

23  
24 Councilmember Praisner,

25 The question that was raised is whether the ark in functioning, when they have -- when  
26 entities who are a party to the --the project are also entities making -- weighing in on the  
27 economic viability from the government perspective.

28  
29 David O'Bryon,

30 In this case—

31  
32 Councilmember Praisner,

33 And that's an issue, if I can, that was not discussed by the Council and is an issue we  
34 may need to look at but is not -- was not resolved or even discussed by the Council  
35 when we created the ark. I -- I had one other--

36  
37 Elizabeth Davison,

38 Ms. Praisner, may I just clarify what, from my prospective what I did because this --  
39 when this issue came up, it was clear to me that there could at least be a perception of  
40 a conflict and at that point what I did was e-mail the County attorney's office and  
41 explained the circumstances to get their input as to what action I should as this, you  
42 know, because both myself and the executive director of HOC are named as members  
43 of the ark and I got a reply of an e-mail from Vicky Gall and, who had also consulted



September 19, 2006

1 with mark Hanson about this issue. They determined that there was not a conflict  
2 because I was doing this ex facio as a profession--.

3  
4 Councilmember Praisner,

5 No, I understand that and I think everybody said that. That's not the question because  
6 the question relates not to personal gain. The question relates to the relationship of the  
7 organization to having the project go forward versus the organization then having  
8 another role in approving the organ – the project going forward and that is issue that the  
9 Council never discussed.

10  
11 Elizabeth Davison,

12 Right, but to clarify the role of the ark is advisory to the planning part.

13  
14 Councilmember Praisner,  
15 Correct.

16  
17 Elizabeth Davison,

18 It's not making a final decision.

19  
20 Councilmember Praisner,  
21 Correct

22  
23 Elizabeth Davison,

24 And we're only looking at financial feasibility.

25  
26 Councilmember Praisner,  
27 Right. I understand that.

28  
29 Elizabeth Davison,

30 And we had consult whose findings were given to us.

31  
32 Councilmember Praisner,

33 I understand that. The only question I heard raised was the question of the fact that the  
34 organizations who are asked to comment are also, have developed an interest in having  
35 the process go forward. That was the only issue and the question was raised that the  
36 Council had -- had the Council discussed this, and we never had and we will have to  
37 and that's all I really want to say on this issue. I don't need to hear any more on this  
38 issue. I do have a question though for Mr. Kominers and the question relates on circle  
39 30 -- 61 page 33 of the packet, and I -- I -- I apologize I may be using the packet from  
40 our vote, let me see, no I'm using this one, the current one.

41  
42 Bill Kominers,

43 This is page 33 of the report?



September 19, 2006

1 Councilmember Praisner,

2 Right. Here is my question, if you begin, knowing that you are requesting a TSR zone,  
3 and you begin with an existing master plan that has these objectives and principles as  
4 what has should come forward in a design or a goal for the TSR zone, why would you  
5 then come forward with a design that, as the Hearing Examiner says, does not meet all  
6 of those guidelines?

7  
8 Bill Kominers,

9 I think because first of all, master plans are -- are guides and you look at your design in  
10 the context of the -- the site and the area as well. The Hearing Examiner noted that we  
11 met I think all but one and a half of the -- of those particular guidelines. And -- .

12  
13 Councilmember Praisner,

14 I think he said two and a half.

15  
16 Bill Kominers,

17 Two and a half? I'm sorry. Okay. In any event and so we try to design a building that  
18 responded to the site and these considerations without having the d -- these guidelines  
19 design the building by itself because if -- if you didn't have anything around it, and you  
20 weren't looking at what the -- the other criteria of design are, that would be one thing but  
21 you have -- you have to balance these with other -- with other elements such as how --  
22 how -- how the units are going to be laid out within the building. What's your -- what  
23 you're marketing to?. How are you relating to the adjoining properties and just as the --  
24 the other buildings that were approved here presumably met or failed to meet those --  
25 those guidelines, looking at those as examples, we tried to fit within the context of that  
26 part of the -- of the community to respond to them as -- as best we felt the design did.  
27 Recognizing as well that the Planning Board, through the process of site plan review, is  
28 going to look at that more carefully when you have more detailed design information.  
29 This is -- this is a rezoning. We haven't designed the -- the units and all of that as of yet  
30 in -- in detail.

31  
32 Pat Harris,

33 I would also add that we also looked at the quantifiable recommendations of the sector  
34 plans and meet every one of those in terms of the density, in terms of the height  
35 recommended on page 39. So, while this page speaks to some of those guidelines  
36 there's other portions of the sector plan that offer additional guidance as to what -- what  
37 the building should be.

38  
39 Councilmember Praisner,

40 Guidance related to height?

41  
42 Pat Harris,

43 Height and density and orientation toward the, well some of these are listed --



September 19, 2006

1 Councilmember Praisner,

2 Some of those are listed here. I mean, there's reference to height, there's reference to  
3 the step down, there's reference to set back, there's reference to rooftop designs to  
4 achieve a residential image, there's reference to how you locate the – the buildings,  
5 locate the units, the front unit, etc..

6  
7 Bill Kominers,

8 And that's and — and we've, and that in conjunction with the sector plan's  
9 recommendations to – to have units on every floor, to have the building present itself to  
10 the street in a – in a way that -- that relates to the street edge, that steps down to the 35  
11 foot heights at Arlington Road. All of those go -- go into it and as well as the way we –  
12 we stepped the – the upper parts of the building, the building slopes in two directions  
13 essentially. It slopes up from north to south as to pull away from the City Homes and also  
14 slopes down west to east or east to west, excuse me, going down toward Arlington  
15 Road, all to try and accommodate those – those elements.

16  
17 Councilmember Praisner,

18 Respond to me, my last question, to the -- this perception, that you're taking what are  
19 five individual lots, obviously putting them together for the TSR which you can, as this  
20 application, but the outcome is a building that very clearly loses the individuality of the  
21 individual lots and the -- gives you amassing of a building. So it's not only the height but  
22 the length and the mass that I think one could raise some questions about.

23  
24 Bill Kominers,

25 I think the sector plan tries to encourage assemblage, and the TSR by having its 18,000  
26 square foot minimum encourages assemblage as well, and then if you're trying to  
27 integrate a building to – to be a community within itself as well as everything else you –  
28 you want it to have a -- a character of an entity. You don't want it to – to sort of break  
29 out into feeling like a series of different buildings and the design is – is very careful to try  
30 – to try and do that. It also tries, as I say, to -- to look at presenting itself to the street as  
31 the sector plan calls for, and -- and having units on the – on the different floors in an  
32 apartment character so as to make the minimum 45 up to a 100 units to the acre that --  
33 that you're looking for in that area, and that's why in -- in working with HOC was – was  
34 critical because if you didn't do this, you'd end up with just townhouse townhouses  
35 probably on the two sides of the existing HOC location which is also not consistent with  
36 the sector plan but because of the – of the size and the inability to assemble the whole  
37 you wouldn't be able to achieve it ,so we felt this was the right way to accomplish-- .

38  
39 Councilmember Praisner,

40 But there was a difference between assemblage and design and appearance and  
41 assemblage, isn't there?

42  
43 Bill Kominers,



September 19, 2006

1 Well, you – you -- you design to what the property is and what the surroundings are and  
2 you – you seek to assemble so as to accomplish the sector plan's goal of the density. If  
3 you didn't assemble and you – and you designed to townhouse density, you'd – you'd  
4 be well below the--

5  
6 Councilmember Praisner,

7 No, I meant once assembled there are multiple designs that one could use --

8  
9 Bill Kominers,

10 Correct.

11  
12 Councilmember Praisner,

13 --that still permit the assemblage for density without perhaps the persona of a large  
14 building.

15  
16 Bill Kominers,

17 That's – that's true. And that's -- that's one of the things that we – we all go through in  
18 the refinement of the design through the process with -- with the Planning Board. I  
19 mean, that's what we expect at site, through the site – the preliminary plan and site plan  
20 process, that we – that we will do that. That's why they're – they're charged with that  
21 and we expect just as we have made modifications in the design and consultation to try  
22 and address concerns of these residents as well as others in the area, that we would  
23 continue to do that with the Planning Board and – and – and their staff as we go through  
24 the process, if we're allow to get there.

25  
26 Councilmember Praisner,

27 Within the context of the binding elements which we would be approving.

28  
29 Bill Kominers,

30 Correct .

31  
32 Councilmember Praisner,

33 Thank you.

34  
35 Bill Kominers,

36 And the Planning Board obviously exercising its view of the public interest in compliance  
37 with the plan. Yes.

38  
39 Councilmember Leventhal,

40 Ms. Floreen.

41  
42 Councilmember Floreen,

43 Thank you. A couple of questions. Mr. O Bryon.





September 19, 2006

1 David O'Bryon,  
2 Yes Ma'am.

3  
4 Councilmember Floreen,  
5 I'm trying to understand, as the record indicates that City Homes your – your  
6 community's maximum height is 55 feet, that's in the material before us, is your – is  
7 your major concern then the height issue?

8  
9 David O'Bryon,  
10 I think if we were looking at a building like ours which is 4 -- 4 stories coming back  
11 before you we would be at a very different conversation today. I think the issue for us is  
12 we have got something where you've got a much smaller parcel of property trying to put  
13 up a much higher building which I think is inconsistent with what we have here in -- in  
14 terms of the community. I -- I there are -- there a couple of things -- I'm sorry, go ahead.

15  
16 Councilmember Floreen,  
17 If you could just focus on the principal points in which I'm trying

18  
19 David O'Bryon,  
20 Yes. Ma'am.

21  
22 Councilmember Floreen,  
23 --to address -- look at here. Is it the height issue?

24  
25 David O'Bryon,  
26 I -- yes ma'am.

27  
28 Councilmember Floreen,  
29 Is that the number one issue for you.

30  
31 David O'Bryon,  
32 I think it is, I -- I, yes, the height is certainly the number one issue.

33  
34 Councilmember Floreen,  
35 That's the number one issue. Okay. Now, the -- the issue of the height permitted under  
36 the zone is 65 feet.

37  
38 David O'Bryon,  
39 At Woodmont.

40  
41 Councilmember Floreen,  
42 Technically.

43  
44 David O'Bryon,



September 19, 2006

1 Technically.

2  
3 Councilmember Floreen,

4 If I could, technically the sec – the TSR doesn't have a height plan.

5  
6 David O'Bryon,

7 Oh, the zone doesn't have a limit. It's the master plan. The master plan recommends 65  
8 feet.

9  
10 Bill Kominers,

11 Between – between Woodmont and the – the last lot on Arlington Road, that entire.

12  
13 Councilmember Floreen,

14 Which is where it goes down to 30 feet.

15  
16 David O'Bryon,

17 Correct.

18  
19 Councilmember Floreen,

20 -- or 35. So, is your issue one of the difference between 55 feet and what has been  
21 recommended by virtue of the screening committee, the 71 feet. Is -- is that for you the  
22 real issue?

23  
24 David O'Bryon,

25 The – I think what's happened with – with this particular project is that you have a  
26 developer who is taking your 65 feet as the base and that's not what the law. The law  
27 says that while they allow up to 65 feet in the TSR zone and they recommend that in the  
28 sector plan, is that what?

29  
30 Pat Harris,

31 The sector plan recommends 65 feet but the plan limit in the –

32  
33 David O'Bryon,

34 I want to be accurate. No, no, that you -- you have number one consistency within the  
35 neighborhood and --.

36  
37 Councilmember Floreen,

38 Okay, so, what you – I – I, would it be correct to say your feeling is it should be the  
39 same as City Homes.

40  
41 David O'Bryon,

42 Yes I think that would be fair to say. We – we -- when we even talk about the – the  
43 Triumph project at the other end, that we were talking that's at the 60, 70 feet level, that  
44 project even and that doesn't even come up right up to that property like this one does.



September 19, 2006

1 Triumph is set back, I think there's a driveway at 24 foot and an 18 foot setback after  
2 that, so there's a distance between our buildings. In this case here we abut our  
3 property. I mean, it's, we are -- we are --

4  
5 Councilmember Floreen,  
6 Did you have a problem with the Triumph?

7  
8 David O'Bryon,  
9 We had some issues with the Triumph issue as well, along the way.

10  
11 Councilmember Floreen,  
12 And that's the 73 feet.

13  
14 David O'Bryon,  
15 Well its 60 feet on one part and 70 -- 70 feet on the other. The 71 and 73 feet were  
16 talking is this project.

17  
18 Marty Grossman,  
19 I should mention Ms. Floreen that -- that the sector plan calls for a high-density low-rise  
20 urban village that steps down in height from 6 floors along Woodmont Avenue to 3  
21 floors along Arlington Road.

22  
23 Councilmember Floreen,  
24 How many stories in the Triumph project?

25  
26 Marty Grossman,  
27 I just know what the -- what the current one is, it's --

28  
29 Unknown Speaker,  
30 It's 60 and 70 feet at the

31  
32 Marty Grossman,  
33 It should be lower than it was originally when you rejected it. It was -- it went back and  
34 they revised it but that's along Woodmont Avenue which is a different.

35  
36 Councilmember Floreen,  
37 Well, let me just -- while we're on this question Mr. Kominers, you were referring--  
38 you've had the -- there's the Triumph apparently.

39  
40 Bill Kominers,  
41 Right.

42  
43 Councilmember Floreen,  
44 Up there. That was zoning case.



September 19, 2006

1  
2 Bill Kominers,  
3 That – that was the zoning case that was approved.

4  
5 Councilmember Floreen,  
6 That was approved. It hasn't been constructed?

7  
8 Bill Kominers,  
9 Correct.

10  
11 Councilmember Floreen,  
12 So, we don't know, and – and it was this zoning case, it hasn't gone through the final—

13  
14 Bill Kominers,  
15 That's – that –

16  
17 Councilmember Floreen,  
18 So it could change. But right now -- what does that show in terms of stories?

19  
20 Bill Kominers,  
21 It should show --

22  
23 Councilmember Floreen,  
24 6 or 7. Depending on how you –

25  
26 Bill Kominers,  
27 I think depending on the side of the building, right.

28  
29 Councilmember Floreen,  
30 Okay, but that -- that wasn't -- you didn't have the same vehemence of concern because  
31 it was on Woodmont.

32  
33 David O'Bryon,  
34 It's on Woodmont and consistent with, and close to metro. I mean if, this is where we  
35 get back to the whole picture with planning. It's like if you wanted this property that  
36 they're talking about here you would have created an egress for people to get to. I  
37 mean, you're walking, I mean, in order for them to be within a thousand feet of metro  
38 they have to come climb over my wall and come through my living room every morning  
39 for breakfast on the way to metro. It's not, you know, we get into those kind of things  
40 when we're trying –

41  
42 Councilmember Floreen,  
43 Sure. Sure. Okay. Now, Mr. Grossman way back when when Mr. when we started out  
44 Mr. . Leventhal asked you some questions about what would happen if you were



September 19, 2006

1 remanded and you said something I wrote down that maybe they could retain the  
2 number of units if they filled in the cuts in the building.

3  
4 Marty Grossman,  
5 Yes, I – I'm just saying –

6  
7 Councilmember Floreen,  
8 What cuts are those? Are those the ones -- I'm looking at maybe circle 124, there are  
9 various pieces of paper that we have that show cuts. Are those – those the one on the  
10 edge of the building that --.

11  
12 Marty Grossman,  
13 You can see them on page -- circle 52, [INAUDIBLE] and I just suggested. I don't have  
14 a record before me or anything before me-- .

15  
16 Councilmember Floreen,  
17 Which cuts are you referring to, on the city home side.

18  
19 Marty Grossman,  
20 Could be on the city home side, could be on the other side but all I'm saying is that I  
21 cant tell you how the building can be redesigned. I don't have that answer to that.

22  
23 Councilmember Floreen,  
24 I understand that.

25  
26 Marty Grossman,  
27 I couldn't answer the question.

28  
29 Councilmember Floreen,  
30 But to retain the affordability elements, which is an issue, you might end up having to fill  
31 in the parts of this building that are designed to accommodate the City Homes people.  
32 Is that right?

33  
34 Marty Grossman,  
35 That's correct.

36  
37 Councilmember Floreen,  
38 I mean that's the light and air issue for these folks.

39  
40 Brent Polkes,  
41 But actually, the don't – they don't—

42  
43 Councilmember Floreen,  
44 Excuse me. I'm – I'm, let – let me get to you in a second.



September 19, 2006

1  
2 Marty Grossman,

3 Yes, what – what I was getting at is yes, those were designed and I – I praise the  
4 applicant for trying to do that. All I'm saying if you lowered the height of the building  
5 those may no longer be necessary. I don't know.

6  
7 Councilmember Floreen,

8 If you squish it down it comes out around the edges.

9  
10 Marty Grossman,

11 You might not have that problem.

12  
13 Councilmember Floreen,

14 Right

15  
16 Marty Grossman,

17 I just can't tell you because it's not in the record and I don't have the expertise to offer  
18 that kind of conclusion.

19  
20 Councilmember Floreen,

21 I see that. So I would – this is -- I would like the neighbor's response on that. Is – is that  
22 something that's of less concern to you, those cutouts on the side?

23  
24 Brent Polkes,

25 Absolutely. Because they don't in any way shape or form materially change the impact  
26 on our buildings. I mean, remember, we're looking at a development that's already been  
27 approved with a proposed height along Woodmont avenue that's going to be at 70 feet,  
28 which is going to have an impact on air and light, but the fact is we understood that that  
29 was going to be developed in a manner similar to what's been approved and it was  
30 expected. But to now surround us on Hamden Lane with a property that is going to be  
31 almost 30 feet taller than the roof line of our townhomes when you include the  
32 penthouse, that's now going to leave us in a position where we are surrounded on two  
33 sides, and the fact of the matter is with those cutouts they don't do anything to afford us  
34 less of a canyon effect than we're now looking at with the proposed development.

35  
36 Councilmember Floreen,

37 You'd rather see a flat side?

38  
39 Brent Polkes,

40 Absolutely.

41  
42 Councilmember Floreen,

43 On line there. Okay. Mr. Grossman, in your proposed -- I think it's your proposed  
44 resolution, I think your -- is it correct to say that -- that it's a --a question – I'm looking at





September 19, 2006

1 circle 21, it's an issue of the feeling of the building that effect -- is the basis for your  
2 concern about compatibility.

3  
4 Marty Grossman,  
5 Well, I -- I have concern about compatibility and the vision of the sector plan and I felt  
6 the Council needed the opportunity to decide. If I may put this -- .

7  
8 Councilmember Floreen,  
9 Is it the, I mean, is it the -- it's the one side -- it's the single building nature of this .

10  
11 Marty Grossman,  
12 The monolithic that you have and

13  
14 Councilmember Floreen,  
15 It's the glass—

16  
17 Marty Grossman,  
18 --knowing Hampden Lane and whether or not that building is consistent with the  
19 Council's vision of what the sector plan suggests for a low-rise urban village. So I felt  
20 that it's necessary for the Council to consider that issue because that's the building, this  
21 -- this is the applicant's exhibit, 37, describing their vision of the building and the  
22 question is do you want. -- is that -- is that the Council vision of the way that are of  
23 Bethesda should look and I felt that the Council needed an opportunity to look at that.

24  
25 Councilmember Floreen,  
26 Are you saying there couldn't be a single building?

27  
28 Marty Grossman,  
29 No I'm not suggesting that. I think that -- I think that the other buildings which are  
30 depicted in the surrounding areas as an example, the Edgemoor Condominiums on  
31 Arlington Road has a completely different look for a building than does the one  
32 proposed by the applicants and I think that part of this review of a development plan it  
33 seems to me is the opportunity for the Council to look and see whether the vision of the  
34 applicant is consistent with the vision of the Council as to what this area of Bethesda  
35 should look like.

36  
37 Councilmember Floreen,  
38 Now, you're say that we should exercise, impose some design elements on this?

39  
40 Marty Grossman,  
41 No. I'm suggesting that --that

42  
43 Councilmember Floreen,  
44 Well, that's what it's about.



September 19, 2006

1  
2 Marty Grossman,

3 What I'm suggesting is that if remanded with instructions to the applicant to take another  
4 look at conforming their design more closely with the sector plan's low-rise urban  
5 village, then that would be -- and I did attempt to do that during the hearing process by  
6 sending letters to the Council asking that they look at this issue but they did not change  
7 their -- their design and I think that if the Council doesn't envision this building as their  
8 vision of the sector plan then remanding it would give them an opportunity to reconsider  
9 that issue.

10  
11 Councilmember Floreen,

12 Well, you could end up, it seems to me, with a building that was I guess more brick and  
13 had the appearance of separate entrances along the way, that was pretty much solid  
14 brick and with -- I don't know you could mess around with the -- with the height, could  
15 take out the cutouts, you could still have 6 stories and you would have a lower edge,  
16 and --

17  
18 Marty Grossman,

19 I think the glass was an issue too.

20  
21 Councilmember Floreen,

22 Clearly the glass is an issue for you. I don't hear it from the others, maybe there is. But,  
23 I -- I -- I mean I can just visualize a different brick treatment on this building and doors  
24 and that would change the -- the analytical process.

25  
26 Marty Grossman,

27 I raised it during the hearing with -- with their applicant's expert, architect and he  
28 indicated that it was designed to a great extent looking out. That is from the idea of the  
29 eye of the proposed tenants of the building and what they would see looking out and  
30 having more glass gives them a nicer view around, rather than looking in, so.

31  
32 Councilmember Floreen,

33 Well, that's to be understood. Okay.

34  
35 Multiple Speakers,

36 [INAUDIBLE]

37  
38 Councilmember Floreen,

39 Yes, Mr. Kominers.

40  
41 Bill Kominers,

42 From your tenure on the Planning Board I'm sure you recall that through the site plan  
43 review process those were the -- the -- how the building addresses the street, where the  
44 entrance are and how it -- how it breaks down its masses and so forth, are all things the



September 19, 2006

1 Planning Board looks at in that process once they have an opportunity to do it. We -- we  
2 did provide the 20 foot recesses related to the gaps between the City Homes  
3 townhouses to try and address their -- their concerns on that. Quite frankly some of the  
4 light and air in those areas is -- is blocked by the other City Homes townhouses as well  
5 as by anything else that gets built around them. And in terms of the vision of the sector  
6 plans, I mean, the Edgemoor high-rise and the Edgemoor low-rise all have -- have been  
7 viewed by the Council as meeting that criteria.

8  
9 Councilmember Floreen,

10 Well, it -- it appears to me based on what I'm hearing from folks, is that the real issue is  
11 this is about 16 feet. It's the difference between 55 feet on the city home side and the  
12 maximum which is 71 here. That's what I'm hearing. Am I mistaken in that?

13  
14 David O'Bryon,

15 Plus they have the penthouse on top of it.

16  
17 Councilmember Floreen,

18 Well, yeah, but this is again -- this isn't the final, these are the maximum numbers. It  
19 could be less at site --.

20  
21 David O'Bryon,

22 If I -- if I were looking at it pragmatically, I do -- and I want to acknowledge here again  
23 which we did at the earlier hearings that the effort here to provide those insets there at  
24 the end of the drive way and the Hearing Examiner noted those I think in his report. I  
25 think our effort here is, you've got a case here where we have an expectation of where  
26 the whole block has been zoned and people buy into that vision -- that vision of what the  
27 build -- it's going to look like. They didn't buy into the mass that's being proposed here  
28 and I think if you have got 35 feet coming at -- at Arlington Road and down here at 65  
29 feet, it shouldn't be 65 feet here with the property that's attached to Arlington Road.  
30 They -- they -- they've bridged it up which is what they did, they did lower it at Arlington  
31 Road, but it shouldn't, I mean you would think it would be more consistent to be with the  
32 surrounding area of 4 stories and that would be what we -- what we'd hope for and that  
33 would be consistent with what our expectation would be and what the ambiance of  
34 Bethesda is in terms of being different from Friendship Heights.

35  
36 Councilmember Floreen,

37 Sure. One last question, was there anything in the record, there are a couple of other  
38 properties on this block --

39  
40 Unknown Speaker,

41 Yes.

42  
43 Councilmember Floreen,



September 19, 2006

1 -- for which there is some future, I would suspect. Was there anything in the record  
2 about -- about that, the properties that, I guess they go from the end of this picture up to  
3 Woodmont.

4  
5 Marty Grossman,

6 That there were two, as I recall the record indicates there are two house garden  
7 apartments that are 3 stories tall and that it may have been mentioned in the record that  
8 the amount of land there might be insufficient and to -- to put together to have enough  
9 land to be a TSR zone and just those two on the --.

10  
11 Councilmember Floreen,

12 I am looking at this thing you gave us, I guess it's part of the record. Perhaps you could  
13 pull that out and my question is, it's the -- what's the one on the end?

14  
15 Bill Kominers,

16 This -- this -- this building is -- .

17  
18 Councilmember Floreen,

19 Is that part of the Triumph project.

20  
21 Bill Kominers,

22 Yes.

23  
24 Councilmember Floreen,

25 Okay, so that whole end of the block is that.

26  
27 Bill Kominers,

28 This is Triumph. These are the 2 three story apartments that Mr. Grossman just  
29 mentioned. These are the 5 of the applicant. This is the existing property that HOC  
30 owns in the middle which would move to here. Here are the City Homes. This is the  
31 Edgemoor low-rise. There's another one planned, a companion building planned for this  
32 corner and this is the Edgemoor high-rise all within the TSR urban village.

33  
34 Councilmember Floreen,

35 Across the street from the City Homes on the other side over there, what's that? I know  
36 that's --

37  
38 Marty Grossman,

39 The Holiday Corporation has a pending proposal .

40  
41 Councilmember Floreen,

42 Was that something part of the record? What was going on over in that neck of the  
43 woods?



September 19, 2006

1 Marty Grossman,  
2 Just to the extent that this record combined the DPA 0602 which also involved the  
3 Edgemoor construction on -- on Montgomery Lane, but this is -- I think what you're  
4 looking at that high-rise is Edgemoor three and this, it got in the record in the sense that  
5 lot 3 was transferred over from the developers of these Edgemoor buildings which  
6 include City Homes and Edgemoor three. This is Edgemoor four and it became part of --  
7 it became lot 3 owned by the parent company.

8  
9 Bill Kominers,  
10 You're speaking about these—

11  
12 Councilmember Floreen,  
13 Yeah I am. Mr. Grossman, perhaps you could tell us -- I suspect times are a changing in  
14 the neck of the woods for the City Homes people, perhaps you could just identify what  
15 things are in the record with respect to developments in the -- shown on this picture.

16  
17 Marty Grossman,  
18 Right. There's nothing in the record concerning these buildings north of Montgomery  
19 Lane.

20  
21 Councilmember Floreen,  
22 Okay.

23  
24 Marty Grossman,  
25 Nothing in the record --

26  
27 Councilmember Floreen,  
28 There is a companion project on Arlington Road, that --

29  
30 Marty Grossman,  
31 Yeah, they -- they, I'm sorry. I believe that there's nothing in the record about this  
32 project, not that I recall.

33  
34 Councilmember Floreen,  
35 Okay .

36  
37 Marty Grossman,  
38 The record includes the -- the adjacent development. I had asked the applicant to  
39 submit photos which they did. These are depicted on the exhibits you have here on the  
40 poster of adjacent buildings, but, and there was testimony in the record about -- and  
41 submissions in the record about the fact that this is a C2 development to the south of  
42 Hamden Lane, mostly two stories and one story

43  
44 Councilmember Floreen,



September 19, 2006

1 That's that little shopping center.

2  
3 Unknown Speaker,  
4 Right, the little shopping center.

5  
6 Bill Kominers,  
7 And south of that the parking garage and federal realty project.

8  
9 Marty Grossman,  
10 Across from is, the Bethesda Library is across Arlington Road at this area, I mean west  
11 of Arlington Road.

12  
13 Councilmember Floreen,  
14 Right. Okay. Okay. Thank you very much.

15  
16 Council President Leventhal,  
17 Mr. Silverman, would you yield to me for one question? I'd like to understand the effect  
18 of a remand on the HOC project. Is -- are the builders of the project in question also  
19 building the HOC project or if the swap were to be, you know, agreed to in concept,  
20 could the HOC project proceed even if these other units were redesigned in some way  
21 and the remand, which I understand would take 4 to 6 months had to play out?

22  
23 Bill Kominers,  
24 The -- the applicant who would be building the main building is not building the HOC  
25 building. The HOC would be handling that itself. But, in order for the HOC building to  
26 move from where it is to where it would be, requires an amendment of the development  
27 plan for all the Edgemoor projects including the City Homes as Mr. Grossman just  
28 described because that development plan shows it where it presently is located as  
29 opposed to where it's proposed to be located.

30  
31 Council President Leventhal,  
32 Okay, but could that move ahead expeditiously or would the development -- my  
33 question remains would remanding this application necessarily result in a delay of the  
34 HOC project on the swap site or instead could the HOC project move forward even if  
35 the applicant's project were redesigned.

36  
37 Pat Harris,  
38 They're tied at the hip and lot 5, which is where HOC would go, needs to be rezoned to  
39 TSR which it currently is not, so they go, the two projects have to go in tandem.

40  
41 Council President Leventhal,  
42 Mr. Grossman do you agree with that.

43  
44 Marty Grossman,



September 19, 2006

1 I do agree.

2  
3 Council President Leventhal,  
4 Mr. Royal, do you agree with that?

5  
6 Cliff Royalty,  
7 I don't know enough about the project to even say.

8  
9 Multiple Speakers,  
10 [INAUDIBLE]

11  
12 Marty Grossman,  
13 Currently lot -- lot 5 is -- is zoned R60 currently. It has to be rezoned to the TSR zone  
14 for the HOC project to proceed so I would agree with what Council suggested here, that  
15 is, that it --

16  
17 Bill Kominers,  
18 This -- this -- this rezoning is important. Lots 1 and 2 and 4 and 5.

19  
20 Council President Leventhal,  
21 Okay.

22  
23 Bill Kominers,  
24 Because 3 where HOC is today is already TSR. To move to 5, 5 has to be TSR also  
25 which links the two applications.

26  
27 Council President Leventhal,  
28 Right. I ask this question without prejudice and simply to clarify. The effect of a vote to  
29 remand, am I correct, is at least a six month or longer delay in housing formerly  
30 homeless people at the HOC property, is that correct?

31  
32 Pat Harris,  
33 That's correct.

34  
35 Council President Leventhal,  
36 Thank you. Mr. Silverman.

37  
38 Councilmember Silverman,  
39 Thank you, Mr. President. Mr. Grossman on page -- circle 60, of the packet that we  
40 have, we're in a -- I think we're in a little bit of a competitive disadvantage because,  
41 although I assume it's the entire master plan is part of the record.

42  
43 Marty Grossman,  
44 The entire sector plan.





September 19, 2006

Councilmember Silverman,

The entire sector plan. I don't have a copy of it nor is it attached here, so I'm going to ask you this. You state here the goal of achieving the low-rise urban village is repeated on page 80 of the sector plan as one of the objectives of the plan. What are the other two objectives of the plan and where are they found in the sector plan?

Marty Grossman,

The objectives found on page 80 of the plan are, one, provide incentives to remove barriers to achieving high-density housing in the TSR district. Two, increase flexibility in the TSR zone to allow district to achieve a low-rise high-density "urban village" pattern and three, retain residential scale along Arlington Road.

Councilmember Silverman,

Okay. How do you reconcile the concept of low-rise high-density with the fact that the master plan also allows 65 feet in height?

Marty Grossman,

Well, the only way I can reconcile it is by the language that's included in -- on page 82 of the sector plan which describes what they mean by low-rise urban village as buildings that "appear to be townhouses but actually are three to six floor buildings with apartments at each level. So, that's, the sixth floor would be the 65 feet, so that's how the sector plan describes the vision, their vision of what it is to be.

Councilmember Silverman,

So, if they had -- if they had in effect instead of one large building, if they had series of 65 feet townhouses, this would be okay.

Marty Grossman,

Well, I'm not, no, I think there is also in this -- in the sector plan it's called for the tempting effect that is that it should be 65 feet along Woodmont Avenue and then gradually step down as the -- as the sector plan says.

Councilmember Silverman,

Where -- where does it, but, again, you know where in the sector plan does it talk about the step down? In other words, where is the -- where is the, what is it, 33 feet?

Marty Grossman,

35 feet.

Councilmember Silverman,

35 feet. Where is it in the sector plan that says when the tenting effect is supposed to occur? In other words it starts at Woodmont and it's supposed to go, I'm just trying to understand -- .



September 19, 2006

1  
2 Marty Grossman,

3 On circle 60 you will see the quote there from page 5. Creating of high-density low-rise  
4 “urban village that steps down in height from 6 floors along Woodmont Avenue to 3  
5 floors along Arlington Road. So, that tenting effect is a gradual, now, I’m not saying that  
6 there cant be any variation.

7  
8 Councilmember Silverman,

9 Well, is this a -- is this a quote, I’m just trying to understand where your quotes are  
10 here.

11  
12 Marty Grossman,  
13 Right.

14  
15 Councilmember Silverman,

16 What’s the quote in the master plan? Create – it starts at create --I’m looking at circle  
17 60. Creation of high-density through 100 dwelling units.

18  
19 Marty Grossman,

20 That’s from page 5 of the – of the master plan, I believe which summarizes, yes, the  
21 very top of page 5, where it summarizes the Transit Station Residential District.

22  
23 Councilmember Silverman,

24 Well, what’s the exact quote that references the—

25  
26 Marty Grossman,

27 That quote is the plan recommends creation of a high-density low-rise urban village that  
28 steps down in height from six floors along Woodmont Avenue to 3 floors along Arlington  
29 Road, and provides from 45 up about 100 dwelling units per acre. The plan retains and  
30 revises the TSR Transit Station Residential zone to achieve this vision.

31  
32 Councilmember Silverman,

33 So, your – the way you reconcile this is that the reference to 65 feet only applies to the  
34 area along Woodmont Avenue.

35  
36 Marty Grossman,

37 Well, not necessarily only along, because there is somewhere else in this sector plan in  
38 which it has – in which it has a diagram that shows, if I recall, the 65 foot area going  
39 about halfway down the block and as being the—

40  
41 Councilmember Silverman,

42 Where would that be?

43  
44 Marty Grossman,



September 19, 2006

1 I'm going to try to find that.  
2  
3 Councilmember Silverman,  
4 Is that in the report that we have in front of us?  
5  
6 Multiple Speakers,  
7 [INAUDIBLE]  
8  
9 Bill Kominers,  
10 This is from figure 3.2 of the sector plan.  
11  
12 Councilmember Silverman,  
13 Is that in the report or is that -- is that in what we have in front of us?  
14  
15 Bill Kominers,  
16 No.  
17  
18 Councilmember Silverman,  
19 But it was part of the record?  
20  
21 Multiple Speakers,  
22 [INAUDIBLE]  
23  
24 Bill Kominers,  
25 This is out of the sector plan, so here's Woodmont Avenue.  
26  
27 Councilmember Silverman,  
28 Yeah.  
29  
30 Bill Kominers,  
31 Actually, let me do it this way.  
32  
33 Councilmember Silverman,  
34 Use your finger, will ya? [laughter]  
35  
36 Bill Kominers,  
37 This is Woodmont Avenue here.  
38  
39 Councilmember Silverman,  
40 Yeah.  
41  
42 Bill Kominers,  
43 Here's the light.  
44



September 19, 2006

1 Councilmember Silverman,  
2 Yeah.

3  
4 Bill Kominers,  
5 Here's Arlington Road.

6  
7 Councilmember Silverman,  
8 Yeah.

9  
10 Bill Kominers,  
11 So, you've got 125 feet on the east side of Woodmont Avenue. You've got 65 feet from  
12 Woodmont Avenue down to what is effectively, in my interpretation of this drawing, the  
13 last lot. That's supposed to be 35 and 65 across that – that block from Woodmont to that  
14 area. Now, it's intended to step and this building does step, as I say, it steps from 33 to  
15 42 to 61 to 71. The plan, it -- It doesn't say how far is the building on Woodmont Avenue  
16 that the 65 feet, where do you – where do you start the steps? We started the steps --

17  
18 Councilmember Silverman,  
19 Okay. So Mr. Grossman, where do you start the steps?

20  
21 Marty Grossman,  
22 Well, I think the problem here is not only where you start the steps but the fact that it  
23 steps down to the three story gardens as well as the 3 story HOC building immediately  
24 to the side of it so you have – you – you start out at a lower level along Hampden Lane  
25 at the three story level, then it jumps up to the 71-foot level, and then it gradually comes  
26 back down again. So you – you have – you have a problem there.

27  
28 Councilmember Silverman,  
29 Well, I guess what I'm trying to understand is who is the tenting supposed to be  
30 protecting? I thought the tenting concept was you're high here and you go this way

31  
32 Marty Grossman,  
33 Right.

34  
35 Councilmember Silverman,  
36 Because of the adjacent neighborhood.

37  
38 Marty Grossman,  
39 Correct.

40  
41 Councilmember Silverman,  
42 The adjacent neighborhood, which apparently, I guess is not objecting to this? I mean,  
43 in other words, I don't see them, no, I'm not talking about these guys. I'm talking about  
44 Edgemoor.



September 19, 2006

1  
2 Bill Kominers,  
3 West of Arlington Road.

4  
5 Unknown Speaker,  
6 Edgemoor across the street testified in opposition.

7  
8 Pat Harris,  
9 Right. Where are they in this record?

10  
11 Unknown Speaker,  
12 No it's not. I mean, they rep – they testified.

13  
14 Councilmember Silverman,  
15 I did not see in here in the opposition that they testified. Did they testify in the hearing?

16  
17 Pat Harris,  
18 Mr. Humphrey testified at the Planning Board hearing on behalf of the ECA and noted  
19 that the ECA supported the project and then he, himself noted that he had concern  
20 about the 65 to 71 and whether that was a correct interpretation of the MPDU law.

21  
22 Marty Grossman,  
23 Yeah, Mr. Humphrey testified at the – at the hearing to say that he was concerned also  
24 about the predictability of –of construction in the area based on the sector plan and he  
25 felt the problem with the proposed the development is that it was above the height that  
26 was predictable by the residents.

27  
28 Councilmember Silverman,  
29 Yeah, I'm looking here if I'm reading – I'm reading, is this page -- circle 34 which  
30 summarizes his testimony. Is it somewhere, I'm just trying to see if it's someplace else  
31 here.

32  
33 Marty Grossman,  
34 I would have had his testimony summarized under summary of testimony.

35  
36 Councilmember Silverman,  
37 Yeah. Hang on. I didn't, let's see I'm looking to see –did he testify in your hearing?

38  
39 Marty Grossman,  
40 Yes.

41  
42 Councilmember Silverman,  
43 Okay, then I'm trying to find his -- oh, here it is, I'm sorry, circle 96. That's filed on the  
44 Montgomery County Civic Federation.



September 19, 2006

1  
2 Marty Grossman,  
3 Right, that's correct.

4  
5 Councilmember Silverman,  
6 Not on behalf of Edgemoor?

7  
8 Marty Grossman,  
9 Not the way he announced it.

10  
11 Bill Kominers,  
12 It indicates that –

13  
14 Councilmember Silverman,  
15 Okay, that's alright. I'm just trying to understand Mr. Grossman is – is who is the tenting  
16 designed to protect? You've got a whole, let me just go back to where the 65 feet is.  
17 Okay. So – so, the – the city community is 55 feet, but they are also part of --

18  
19 David O'Bryon  
20 That's the top -- that would be equivalent, as the top of the roof line would be the  
21 equivalent of 71 feet plus 15 feet on top of it that they're proposing.

22  
23 Councilmember Silverman,  
24 No, I'm asking about your community.

25  
26 Marty Grossman,  
27 Theirs is 65 feet.

28  
29 Councilmember Silverman,  
30 Right, and was that part of, is that part of the 65 feet? Well, I guess what I'm trying to  
31 understand Mr. Grossman is since you're the one who is recommending a remand  
32 because you think it ought to be shorter, I'm trying to understand if that whole area  
33 including the – the community that is – is in opposition, if that's all built for 65 feet -- I  
34 mean is eligible for 65 feet including City Homes of Edgemoor but for whatever reason,  
35 whoever developed City Homes of Edgemoor built it at 55 feet, why is the tenting effect  
36 an issue between this p – you know, proposed project and City Homes.

37  
38 Marty Grossman,  
39 First of all, I don't – I don't necessarily think that it all is eligible, like you say, for 65 feet  
40 if in fact when you get closer to the Arlington Road, you have to be 35 feet. There  
41 should be some stepping up so light just to the east of that would be eligible in terms of  
42 planning at maybe 45 feet and so gradually up to 54.

43  
44 Councilmember Silverman,



September 19, 2006

1 I guess what -- I'm not trying to not allow you to answer the question. I'm just trying to  
2 understand if the tenting concept, as I, you know, as I had always understood it, was to  
3 basically to protect, and this is obviously not the only community -- was designed to  
4 protect the adjacent communities. The adjacent community in this case is not these  
5 folks.

6  
7 Marty Grossman,  
8 Yes, they are. They are directly adjacent.

9  
10 Councilmember Silverman,  
11 How can -- adjacent meaning where the tenting effect is. They're -- they're built -- they're  
12 -- they're like this. The tenting is supposed to go like this. It's supposed to go like this  
13 because of these folks. If they could have built 65 feet and they could build 65 feet  
14 under any tenting concept, they -- they -- their -- their builder built it at 55 feet. So I'm  
15 just, hang on just a second Mr. Polkes. So I'm just trying to understand from the Hearing  
16 Examiner why you're having a problem with the fact that they start out here and go up  
17 here and come down here when -- when it seems as though the protection of, you know,  
18 this whole tenting concept is designed to address the people that are closest to the  
19 edge of whatever is going on on Hampden Lane.

20  
21 Marty Grossman,  
22 Right. I think I understand your point and I agree that tenting is not the most critical  
23 issue here. What's most critical, there are a number of things that are critical, but one of  
24 them is the idea of compatibility would be the adjacent buildings. The adjacent buildings  
25 being City Homes and the problem here being that the height of the proposed building  
26 as it immediately backs to the City Homes buildings plus the addition of their -- their  
27 mechanical penthouse makes a compatibility problem with the -- the --.

28  
29 Councilmember Silverman,  
30 Okay, so you're not as concerned -- so you're not as concerned about tenting, you're  
31 concerned about the fact that it's 71 feet.

32  
33 Marty Grossman,  
34 Right, and if I could finish the answer though, they're also adjacent to the east to the  
35 proposed HOC building, which will be only a 3 story building as well as these other two  
36 garden apartments which are only 3 stories so there's a compatibility problem  
37 immediately to the -- to the east.

38  
39 Councilmember Silverman,  
40 With HOC building?

41  
42 Marty Grossman,  
43 HOC's building will only be 3 stories.





September 19, 2006

1 Councilmember Silverman,  
2 Did they testify in opposition?

3  
4 Marty Grossman,  
5 No,

6  
7 Councilmember Silverman,  
8 Did the owners of the other apartment buildings testify in opposition?

9  
10 Marty Grossman,  
11 No, but they – they, but I think compatibility is not an issue which arises solely from  
12 whether or not there is opposition testimony. It is a test that is required in – by the  
13 Council in the zoning ordinance, compatibility with – with the surrounding area.  
14 [laughter]

15  
16 Bill Kominers,  
17 Mr. Silverman, under – under – under Mr. Grossman's theory of tenting then, this  
18 building could never be taller than 3 stories until the garden apartments redevelop to  
19 something higher. I don't think that's what the concept is for. You could also look at it as  
20 one of the reasons we put the 3 story HOC building there was to be more related to the  
21 height of those buildings

22  
23 Councilmember Silverman,  
24 Okay.

25  
26 Unknown Speaker,  
27 But it's really –

28  
29 Councilmember Silverman,  
30 Okay. Okay. Mr. O'Bryon or Mr. Polkes, did you want to comment on this?

31  
32 Brent Polkes,  
33 Yeah, I would.

34  
35 Councilmember Silverman,  
36 Sure.

37  
38 Brent Polkes,  
39 I think when you look at the City Homes, what you have are five separate distinct  
40 buildings, each comprising six townhomes, actually one has only five. And the fact is  
41 that because of the elevation of the street, you actually have the tallest building at 55  
42 feet, which is the eastern most of the five buildings. And actually all of the buildings  
43 scale down to a point where the western most building in City Homes is actually six feet  
44 below the height of the eastern most building and then you have a further scaling down



September 19, 2006

1 with Edgemoor at Arlington which is at, I think, 46 feet at its maximum height. So, when  
2 you look at the Triumph project which will start at Woodmont Avenue at 6 stories, you  
3 do in fact have the tenting effect that was envisioned by the step down in the sector plan  
4 and it's not a visual. It's a reality.

5  
6 Councilmember Silverman,  
7 Okay. Mr. Polkes, did you want to say something Mr. O'Bryon?

8  
9 David O'Bryon,  
10 When the developer came into you all to do the City Homes development, I think he  
11 asked for more and you gave him what came out of the product here. I don't normally  
12 think --

13  
14 Councilmember Silverman,  
15 That's way outside the record.

16  
17 David O'Bryon  
18 You asked --

19  
20 Councilmember Silverman,  
21 No, I was just commenting on the fact that -- that the height limits for that area under the  
22 master plan are 65 feet. Yours was built at 55 feet, which does not apparently preclude,  
23 I guess this was my point, apparently preclude anything else from being built at 65 feet.  
24 I understand that Mr. Grossman is not foc -- I mean, 65 feet is the maximum, but the  
25 issue what -- the issue that Mr. Grossman has raised and that you are raising is  
26 compatibility. Let me ask you this Mr. Polkes. You had said earlier and I'm not, I may be  
27 quoting or I may be paraphrasing, that you thought that when people bought into City  
28 Homes that you were figuring there was going to be three to four story -- I'm not trying to  
29 -- this isn't a trick question. I'm just going to -- I guess what I'm asking is it seemed that  
30 that was what your comment was and I'm trying to understand, with all due respect, I  
31 wouldn't expect -- I mean I know that you're supposed to sign off, everybody that buys a  
32 home is supposed to sign off that they've looked at the master plan. Well the master  
33 plan in this case has a 65-foot height limit

34  
35 Brent Polkes,  
36 Well what I said --

37  
38 Councilmember Silverman,  
39 --and it also has this low-rise concept which creates, you know, at best ambiguity, at  
40 worst complete confusion.

41  
42 Brent Polkes,  
43 Well actually, my comment really was in the context of the original TSR zoning  
44 application for the 12 MPDU units on Hampden Lane. What I said was that we didn't



September 19, 2006

1 oppose the TSR rezoning for lot 3 on Hampden Lane, which would have enabled a  
2 project to be built for either HOC or Department of Community Housing and Affairs. I'm  
3 not sure who it was. But it was going to house 12 MPD units and the delay in that  
4 project is not necessarily tied at the hip to what we decide to do here. That delay was  
5 something that goes back to June of 2005 and maybe beyond, when in fact it was  
6 decided to delay all the time, effort, energy and money that HOC had put into  
7 developing plans to build out those MPD units. So, the delay is not tied to your decision  
8 as to whether or not you remand. But my comments were that as a community, we  
9 didn't oppose that project or the rezoning application in part because the building of that  
10 project would guarantee that any further development along Hampden Lane would not  
11 exceed 4 stories in height, which was the concept that we bought into when we looked  
12 at the original master plan or the sector plan.

13  
14 Councilmember Silverman,  
15 Well, I guess that's what I was referring to is--

16  
17 Brent Polkes,  
18 So my -- my comment wasn't whether or not you could have 65 feet here or there or  
19 anywhere. My comment was that when we did not oppose the rezoning of lot 3, in part it  
20 was because that guaranteed our vision of what we saw as the low-rise urban village  
21 concept that we bought into.

22  
23 Councilmember Silverman,  
24 But you bought -- you bought into that well before, you and others at City Homes bought  
25 into that well before any plans to develop the HOC project.

26  
27 Brent Polkes,  
28 Absolutely.

29  
30 Councilmember Silverman,  
31 So -- so your -- your vision was this vision on, you know, whatever the page--.

32  
33 Brent Polkes,  
34 My vision was -- my vision was the architect or the artist depiction --

35  
36 Councilmember Silverman,  
37 Right.

38  
39 Brent Polkes,  
40 --of the low-rise urban village concept, but the fact is that was further reinforced by the  
41 subsequent application to rezone lot 3 to TRS, which we chose not to object to,  
42 because, in fact, that in our, as we saw it, pretty much guaranteed that what was  
43 rendered in the artist's depiction would in fact become a reality on Hampden Lane. And



September 19, 2006

1 to take that away from us is just not consistent with what I believe is in the public  
2 interest.

3  
4 Councilmember Silverman,  
5 Is this Mr. Grossman, this illustration that's on circle 61, is – is this supposed to be  
6 Hampden Lane?

7  
8 Marty Grossman,  
9 That's Montgomery Lane.

10  
11 Councilmember Silverman,  
12 Montgomery Lane?

13  
14 Marty Grossman,  
15 Right. I believe looking from Woodmont.

16  
17 Councilmember Silverman,  
18 This has no -- other than the reference here to it -- it doesn't say what streets we're  
19 supposedly looking at.

20  
21 Marty Grossman,  
22 This is directly from the – from the urban design.

23  
24 Councilmember Silverman,  
25 Right, but what am I – what am I looking at?

26  
27 Marty Grossman,  
28 I think you're looking at Montgomery Lane

29  
30 Unknown Speaker,  
31 Yes.

32  
33 Marty Grossman,  
34 Existing view of Montgomery Lane looking from Woodmont Avenue.

35  
36 Councilmember Silverman,  
37 I'm sorry, where the car is. I know there's multiple cars. The car that is – is in the front of  
38 the picture here traveling, I'm not even going to say east west, just traveling. Is that  
39 traveling on Montgomery or is that traveling on Woodmont.

40  
41 Marty Grossman,  
42 On Woodmont.

43  
44 Councilmember Silverman,



September 19, 2006

1 That's traveling on Woodmont, so, and this is Montgomery Lane. That is here? Okay.  
2 So we don't, this illustration doesn't have Hamden Lane on it at all.

3  
4 Bill Kominers,

5 No. In the – in the master plan, there are two pictures with that picture. Of course one is  
6 before and one is after. The before says existing view of Montgomery Lane looking west  
7 and then after proposed low-rise high-density urban village and so forth. This view of  
8 Montgomery Lane obviously doesn't have the high-rise Edgemoor right on the corner  
9 where these buildings are, where it in fact is today.

10  
11 Council President Leventhal,

12 Could we – could we, just on this diagram because it is important, could we put the  
13 photograph there on the clipboard and with the diagram because now I start to  
14 understand about the diagram because the diagram really is germane. Could you put  
15 the photograph – the aerial photograph just below there Bill and avert your eyes  
16 because I'm going to use a laser pointer here. So this is Woodmont, correct? Okay, so  
17 this – what I'm pointing at, this is actually this? No?. Alright, so this street is  
18 Montgomery Lane and that's Montgomery Lane, okay, right. So, these townhouses are  
19 these townhouses and this building is this building.

20  
21 [INAUDIBLE]

22  
23 Bill Kominers,

24 Except there's no trees. In the real world, there's no trees of course, right. But – but in  
25 terms of the height.

26  
27 Councilmember Perez,

28 We'll have a public hearing on that.

29  
30 Council President Leventhal,

31 In terms of the height, okay, it -- it's roughly approximated and this on the side of the  
32 townhouses is not visible in this diagram, so this diagram doesn't even really tell you  
33 what would happen down on this side where the applicant's proposal is supposed to go.  
34 That's down here somewhere.

35  
36 Pat Harris,

37 Actually, if I could, I think the high-rise building is supposed to be the Chase, which is  
38 100 feet plus which is already in existence in 1994. The high-rise Edgemoor is that  
39 grove of trees that you see right there in the corner.

40  
41 Council President Leventhal,

42 Oh, okay, so where's the – where's the Chase in the aerial photograph?

43  
44 Council President Leventhal,



September 19, 2006

1 It's here. But the diagram doesn't actually answer the question. It ends right at the point  
2 where the applicant's property begins.

3  
4 Marty Grossman,

5 Except that it gives you the example of what the – what the sector plan conceived of as  
6 their low-rise high-density housing on a mixed street and Hampden Lane is a little bit  
7 further away from the core.

8  
9 Council President Leventhal,

10 Okay. It's 10 minutes to 1:00. I know other Council members have questions. Mr.  
11 Silverman's done. I have a quick question and it will really be very quick. As I read the  
12 resolution that the Hearing Examiner has given us, the resolution to remand, it states a  
13 number – it – it -- it refers to a number of prior actions by the County Council. It refers to  
14 the sector plan. It refers to the adequate public facilities ordinance. Unless I miss it, it  
15 does not refer to the amended MPDU law and it does not refer to the decision by this  
16 Council to allow higher height limits to facilitate MPDU's. That appears to be missing.  
17 Mr. Kominer's referred to it in his remarks but Mr. Grossman's – the resolution that Mr.  
18 Grossman has drafter does not appear to refer to that, but that also seems germane to  
19 me in terms of an action by this Council that – that bears on this case. Mr. Grossman,  
20 did that action by the Council, the new MPDU law which allows for heights even in  
21 excess of a sector plan to facilitate MPDU's , did that factor into your recommendation  
22 to remand?

23  
24 Marty Grossman,

25 Well certainly it was discussed at some length in the – in the report. But, I guess it  
26 wasn't -- I haven't – I haven't scanned the resolution again, but I guess it didn't become  
27 a factor once you were remanding the case. But the question of the review to add  
28 additional MPD units and so on is discussed in the report.

29  
30 Council President Leventhal,

31 Okay, let – let 's try to really truncate our questions at this point colleagues. Only  
32 ourselves stand between ourselves and lunch. I have Mr. Subin followed by Ms. Floreen  
33 followed by Mr. Perez.

34  
35 Councilmember Subin,

36 Thank you. You -- you actually just saved some time because I have the same  
37 questions that you read in the portion on the public interest which starts on circle 24.  
38 There is no discussion of the MPDU's. And so clearly there's a clash of—of – of public  
39 interests and – and policies here, which – which I think are clarified by what the Council  
40 President just said regarding the new MPDU law, which – which – which does not show  
41 up in the public interest section of the report.

42  
43 Councilmember Subin,

44 How -- what is the height of lot 6 if -- as it could be built out in the step down?



September 19, 2006

1  
2 Councilmember Subin,  
3 You start at 70 in lot -- the end lot.

4  
5 Council President Leventhal,  
6 Lot 6 could conceivably be 65 feet.

7  
8 Multiple Speakers,  
9 [INAUDIBLE]

10  
11 Councilmember Subin,  
12 I'm just a poor little city boy from the streets of Newark, New Jersey, so I -- I don't quite  
13 understand all this and I'm not sure if anybody answered the question earlier. Why is the  
14 HOC housing on lot 5 instead of lot 1?

15  
16 Council President Leventhal,  
17 If I understand it correctly, the -- if it were on lot 1 that would have a more detrimental  
18 impact on the city.

19  
20 Pat Harris,  
21 That's correct.

22  
23 Council President Leventhal,  
24 I tried to follow the moving parts here. By having the HOC property which is -- It's  
25 shorter, closer to City Homes you have less of an impact on their light than if you moved  
26 the whole thing eastward and had the HOC property on the corner instead of abutting  
27 the City Homes.

28  
29 Bill Kominers,  
30 You're exactly right. The other thing is quite frankly, it's closer to the metro and I mean,  
31 yes --.

32  
33 Council President Leventhal ,  
34 The lots closer to metro.

35  
36 Councilmember Subin,  
37 Bill, come on. It's ten seconds closer to the metro on foot.

38  
39 Council President Leventhal ,  
40 But the effect would be more detrimental on City Homes.

41  
42 Councilmember Subin,





September 19, 2006

1 Everybody – everybody is talking about how it looks and these step downs in the lines.  
2 Do you all under -- again, maybe on the streets we just don't get it. But it seems to me  
3 you've got this and a big dip and then a line there's nothing consistent in there.  
4

5 Pat Harris,

6 All along Wisconsin Avenue you have—in the heart of Bethesda at East West Highway  
7 you have --  
8

9 Councilmember Subin,

10 You've got those because of the way you've got the infield going in. This is a designed  
11 dip.  
12

13 Bill Kominers,

14 Well, no, I mean because those other -- those other two buildings have not yet  
15 redeveloped. I mean, they're – they're  
16

17 Councilmember Subin,

18 When they do re -- redevelop, they will be --  
19

20 Unknown Speaker,

21 65 feet taller.  
22

23 Councilmember Subin,

24 --65 feet taller. Plus they're at the top of the hill, so it's really 77 feet.  
25

26 Bill Kominers,

27 But if you look at this as – as Mr. Leventhal indicated, if you took that HOC building out  
28 of this position and moved it over here, and shifted this building back to this point, you  
29 would block an additional portion of those other two groups of the townhouse.  
30

31 Councilmember Subin,

32 Well if you're so interested in not blocking, why do you have the other pieces that is you  
33 have in there?  
34

35 Bill Kominers,

36 Because in the design of those from a plan standpoint, you cut out the areas opposite  
37 the – the open space and we've stepped the upper floors back away from it.  
38

39 Councilmember Subin,

40 Alright, the real impact, what you're saying is you've by -- by doing it that way, which I'm  
41 having a hard time accepting that rationale, the impact is only on four sides out of the  
42 ten of – of City Place. Not even – not even addressing the issue of the step downs on  
43 the western side.  
44



September 19, 2006

1 Unknown Speaker,  
2 Okay.  
3  
4 Bill Kominers,  
5 Alright, there was a – there was a great –  
6  
7 Councilmember Subin,  
8 Looks goofy to me, but –  
9  
10 Council President Leventhal,  
11 Okay, Ms. Floreen.  
12  
13 Councilmember Floreen,  
14 Thank you, very quickly. Mr. Grossman. The HOC project, which I guess is not before  
15 us.  
16  
17 Marty Grossman,  
18 Yeah, well the issue –  
19  
20 Councilmember Floreen,  
21 It is before us?  
22  
23 Marty Grossman,  
24 Yeah, well the HOC in DPA 06-2 is before you and  
25  
26 Councilmember Floreen,  
27 Today?  
28  
29 Marty Grossman,  
30 Yes, it -- it's a development plan amendment because --  
31  
32 Councilmember Floreen,  
33 Okay, so—so it's three stories?  
34  
35 Marty Grossman,  
36 Three stories.  
37  
38 Councilmember Floreen,  
39 So, really is that a -- how can we approve a 3 story building in the middle of this block? I  
40 mean, under your analysis, it should be 6.  
41  
42 Marty Grossman,  
43 Well, no –  
44



September 19, 2006

1 Councilmember Floreen,  
2 To meet the tenting effect; right?  
3  
4 Marty Grossman,  
5 Right.  
6  
7 Councilmember Floreen,  
8 Right?  
9  
10 Marty Grossman,  
11 If in fact you --  
12  
13 Councilmember Floreen,  
14 Is that correct? Yes. So why would we approve a lower building?  
15  
16 Marty Grossman,  
17 Well --  
18  
19 Councilmember Floreen,  
20 Because we would thereby set the precedent for the next project that says the next door  
21 building is 3 stories so you have to be 3.  
22  
23 Marty Grossman,  
24 But that's -- That's on the assumption that the HLA building were to go --  
25  
26 Councilmember Floreen,  
27 What's the HLA?  
28  
29 Marty Grossman,  
30 That's the applicant's proposal Hampden Lane Associates, yes, HLA. If that building  
31 were lower than -- than the other. The problem is, you have a compatibility problem  
32 because you do have City Homes which is sitting there. And it it -- it exists already.  
33  
34 Councilmember Floreen,  
35 Well are you saying that City Homes shouldn't be approved because it's below the tent  
36 -- doesn't achieve the tent height.  
37  
38 Marty Grossman,  
39 That was argued by the applicant. They argued that it was approved when it shouldn't  
40 have been.  
41  
42 Councilmember Floreen,  
43 It shouldn't have been approved.  
44



September 19, 2006

1 Marty Grossman,

2 The problem is it exists now. And it exists the way it is and it seems to me that given  
3 that it exists, one of the tests is compatibility.

4  
5 Councilmember Floreen,

6 So should we make height the base rather than the – the – a ceiling?

7  
8 Marty Grossman,

9 I think that you have to look at how it's going to affect the building immediately to the  
10 north and the HOC building for that matter, whatever building is immediately to the east  
11 of it.

12  
13 Councilmember Floreen,

14 I – I -- I'm just finding a total lack of consistency in the interpretation of the height issue.  
15 If you're trying to achieve a tent effect, then you should recommend a tent effect and  
16 you should not recommend buildings that do not achieve that. In approving something  
17 like the city – I guess this Council approved it, I don't know. The Council must have  
18 made a call that well nobody complained, A, I'm sure and two why not, basically. But not  
19 it – it didn't provide the number of units per acre that was -- would you say a project was  
20 not compatible with the master plan because it does not achieve the density  
21 recommended in the master plan?

22  
23 Marty Grossman,

24 I would say it's not entirely consistent with the master plan.

25  
26 Councilmember Floreen,

27 So this project has 81 units an acre, it's within the range?

28  
29 Marty Grossman,

30 Right.

31  
32 Councilmember Floreen,

33 But it could have 100 units an acre and still meet that standard in the master plan?

34  
35 Marty Grossman,

36 If I recall the – the language.

37  
38 Councilmember Floreen,

39 Okay. Alright.

40  
41 Marty Grossman,

42 My recommendation was a remand, not necessarily approving the height of one of the  
43 others so that these kinds of issues could be further explored because there was a



September 19, 2006

1 problem in my mind with both compatibility and consistency with the vision of the sector  
2 plan.

3  
4 Councilmember Floreen,  
5 Okay. No.

6  
7 Council President Leventhal,  
8 Okay. Now more lights are going on. Mr. Perez followed by Mr. Knapp.

9  
10 Councilmember Perez,  
11 I'll simply note for the record that I have not added any time this morning.

12  
13 Council President Leventhal,  
14 Not yet.

15  
16 Councilmember Perez,  
17 Mr. Knapp has not added any time this morning. There's nine MPDU's proposed under  
18 your project?

19  
20 Unknown Speaker,  
21 Correct. If the --

22  
23 Unknown Speaker,  
24 Which is 15 percent.

25  
26 Councilmember Perez,  
27 Right. My fifth grade daughter's math, we're going a lot of this division right now so  
28 actually it's been very helpful lately that I've had a little more time on my hands. The --  
29 [laughter] that was meant to be a joke. You can laugh.

30  
31 Council President Leventhal  
32 If you add the project together it's plus 12 with the HOC.

33  
34 Councilmember Silverman  
35 Hey I got a little more time on my hands.

36  
37 Councilmember Silverman,  
38 You want to go golfing? [laughter]

39  
40 Multiple speakers,  
41 [INAUDIBLE]

42  
43 Councilmember Perez,



September 19, 2006

1 If – if there's a remand, again, and I think Mr. Leventhal may have asked this before but  
2 I'm just trying to following the bouncing ball, how do you build the – how do you build  
3 them on site, assuming that it were remanded? I mean, what I'm hearing is you want 55  
4 feet – you want no more than 55 feet? That's what I heard you say, is that correct?

5  
6 David O'Bryon,

7 That's con -- we want properties that are consistent and if we're doing the tenting –

8  
9 Councilmember Perez,

10 Tents don't work for me because I have dome tents, you know, when I think of the  
11 tenting effect I'm thinking of something different.

12  
13 Brent Polkes,

14 Actually, Mr. Perez, what we're saying is that when you look at the artist depiction of  
15 what the low-rise urban village concept was going to be, our townhouses are completely  
16 consistent with that artist's rendering and we're suggesting that we want to see  
17 something on Hamden Lane that is both compatible and consistent with that artist's  
18 rendering. Whether it's 40 feet, 50 feet, 55 feet. I don't know that that's the issue as  
19 much as what is being proposed here is just not consistent with the definition of the low-  
20 rise urban village concept that is laid out in the sector plan.

21  
22 Councilmember Perez,

23 But the challenge is I heard him read the three prongs of the sector plan. Prong one it  
24 seems to me is at potentially at odds with prong 2. I thought I heard you say prong one  
25 was you want to accommodate more density in these areas. Is that what I --

26  
27 Unknown Speaker,

28 That was one of them.

29  
30 Councilmember Perez,

31 Okay, so more density means more density. And then prong 2 we have this nice artist's  
32 rendition which can arguably be construed to say less density and so, and then we have  
33 all this work we did on the Council about MPDU's and we had this discussion in which  
34 Bethesda was the poster child of our concerns about not allowing, we – we wanted  
35 MPDU's on site and we yelled at and screamed at Elizabeth Davison for allowing them  
36 not to be on site in some cases and – and we passed laws to – to – to limit that and so  
37 we continue to have a clash of public policy objectives here in the context of this legal  
38 proceeding. And then we have, we were yelling at Carolyn Colvin because of the  
39 relatively slow pace of building our PLQ's and -- and the effect of a remand is going to  
40 be that we're going to have that much more time to build 12 more units and so we have  
41 – and then we have legitimate concerns about compatibility that you have – have  
42 raised. So that is the bidding as I'm hearing it right now and –I'll just go back to the  
43 quote I think I used roughly 27 hours ago which is we seem to be having public policy  
44 that's going in different directions and that's the struggle I'm having here and I'm -- I'm



September 19, 2006

1 trying to understand the specific -- I'm trying to get a -- a much better handle on what a  
2 remand would look like because I -- I don't want this -- I'm concerned that it's going to  
3 drag on and on and on. I appreciate Mr. Grossman's four to six month estimate, but I'm  
4 -- I'm -- I'm trying to get a much more specific handle and I -- I understand that you  
5 maybe don't want to get tied down on a -- a ceiling, no pun intended, on the number of  
6 feet, but I -- I want -- I want to try to get a handle on whether there's a way to craft this  
7 such that we're not going to be, well the Council is not going to be sitting here two years  
8 from now having this same conversation because I heard about Hamden Lane I think  
9 when I was campaigning for the County Council four years ago and -- and four years  
10 later, we're still having that conversation.

11  
12 Brent Polkes,  
13 You had 12 MPD units approved. You had construction plans. You had money spent.  
14 You had a grant available.

15  
16 Unknown Speaker,  
17 From HUD.

18  
19 Brent Polkes,  
20 And, that could have been built out had construction begun in June of 2005. So,  
21 obviously, the build out of the MPDU units was not necessarily as important as trying to  
22 facilitate this developer's swap, I mean --.

23  
24 Marty Grossman,  
25 For a transitional housing unit, that was approved for lot 3 at the 3 story height with the  
26 12 units.

27  
28 Bill Kominers,  
29 When Norman Cristelle was chairman of the Planning Board, he used to always tell me  
30 or tell applicants that the Planning Board reserved the right to get smarter, and --.

31  
32 Council President Leventhal  
33 Are we within the record now? I mean this -- [laughter]

34  
35 Council President Leventhal,  
36 The whole issue, the history, the issue of the HOA property seems to me to be outside  
37 the issues on which we agreed to hear oral arguments.

38  
39 Bill Kominers,  
40 It's in the record because --

41  
42 Multiple Speakers,  
43 [INAUDIBLE]





September 19, 2006

1 Unknown Speaker,  
2 That's not in the record.

3  
4 Council President Leventhal,  
5 I'm going to ask Mr. Perez if he is done.

6  
7 Unknown Speaker,  
8 I want to respond to Mr. Perez's question.

9  
10 Councilmember Perez  
11 I was trying to get a better handle than I currently have on -- on precisely what you --

12  
13 Councilmember Perez,  
14 Whenever I'm in a situation like this, what do you want in a remand, what do you want  
15 to see?

16  
17 David O'Bryon  
18 I think we want a building more compatible in height with ours and compatible with what  
19 the neighborhood looks like. I think, we have no problems with MPDU's. We didn't  
20 object to the HOC thing. We just got another 12 MPDU units on -- these are on our  
21 block. In addition to this 12 plus the 9, we just had Triumph approved for another dozen  
22 MPD units. I mean, we are not objecting to any of the MPD. I'm personally in favor of  
23 MPD units so we have projects that are going forward that do have MPD units in them. I  
24 think what we're trying to get something more compatible and just doesn't completely  
25 overshadow what is -- what is an urban village as opposed to a high-rise scenario.  
26 That's where I'm coming from.

27  
28 Council President Leventhal  
29 Okay. Mr. Perez.

30  
31 Bill Kominers,  
32 Mr. Perez, you had a question in terms of happens, I'm sorry.

33  
34 Council President Leventhal,  
35 No, no. Mr. Perez had the floor, I need to know if you're yielding the floor.

36  
37 Councilmember Perez,  
38 What happens, okay, Mr. Kominers.

39  
40 Bill Kominers,  
41 I think that if --if you remand, there are a couple of things that happen. If you reduce the  
42 height to a height that we don't know what it is as of yet.

43  
44 Councilmember Perez,



September 19, 2006

1 Let's assume 55 feet for the purpose of this conversation.

2  
3 Bill Kominers,

4 I think – I think the information that the ark reviewed was and – and based its  
5 recommendation on is that if you reduce the height and reduce the density to that  
6 extent, you don't get the same quantity of units in the project. You don't get the same  
7 number of MPDU's. You don't get the same number of market units. And the -- the  
8 purpose of the ark recommendation remember was to allow you to specifically go  
9 beyond what the master plan calls for. I'm not sure if – if – if you said that this should be  
10 at 55 feet, if we go back to the ark, can the ark then allow it to go to 65 or 60? Or does  
11 that all have to be -- are we sort of out of the ark process because it's no longer related  
12 to the – to the master plan height? The ark process was established specifically to allow  
13 in the appropriate circumstances on – on the economic review, to get that – get that  
14 bonus, get the MPDU's on site and to exceed the master plan height in density. When  
15 you – when you approved that law, I have to believe that you recognized that in all  
16 those master plans where you have height limits that you were going to go beyond  
17 those, and there was going to be a tradeoff on compatibility or other issues in return for  
18 getting the greater MPDU's and getting them on site. That's a policy decision that you  
19 made as a part of that. And – and this case is dead on with that – with that law and  
20 policy decision, in our opinion.

21  
22 Councilmember Perez,

23 Mr. Grossman, if -- if it all gets reduced, do we then run into a problem where Council is  
24 back hearing oral argument on the first prong of the sector plan?

25  
26 Marty Grossman,

27 Well, I think you -- Let's face it, there is a tension between the MPDU, the -- the  
28 increased height and density permitted in the zoning ordinance versus the compatibility  
29 issue with the surrounding area and I guess the – the simple answer is that the Council  
30 has to resolve that issue. In this case, my impression from the – from the record was  
31 that there hadn't been sufficient attention to the compatibility and height issue with the –  
32 with the back and to this division of the sector plan and so it could be revisited by the  
33 developer and see if they can come up with a better plan.

34  
35 Councilmember Perez,

36 Thank you.

37  
38 Council President Leventhal,

39 Mr. Knapp.

40  
41 Councilmember Knapp,

42 Thanks. I will be brief. We talked about a whole bunch of issues. Seems to me that,  
43 correct me if I'm wrong, but effectively today, we're voting if—if we vote to approve,



September 19, 2006

1 we're voting to change the zoning on four parcels and effectively setting a maximum  
2 height limitation.

3  
4 Marty Grossman,  
5 Correct?

6  
7 Councilmember Knapp,  
8 Increasing the height limitation. Those are the two criteria that we're voting for.

9  
10 Marty Grossman,  
11 Voting. You'd be voting to also approve the development plan amendment 06-2 and  
12 which allows the swapping.

13  
14 Councilmember Knapp,  
15 Right. So it allows the swap. But effectively on those parcels, the swap takes place but  
16 we're going to increment the potential height increase in those four zones, those four  
17 parcels.

18  
19 Marty Grossman,  
20 And the development plan. I mean, you're specifically approving the development plan  
21 which includes the building that's building depicted.

22  
23 Councilmember Knapp,  
24 Okay, but once they're -- once we have done that, then the applicant still has to go back  
25 to Park and Planning for

26  
27 Marty Grossman,  
28 Site plan review and --

29  
30 Councilmember Knapp,  
31 --for site plan which is going to go -- could -- could potentially modify the entire look and  
32 feel of the building that we have seen depicted before us.

33  
34 Bill Kominers,  
35 It could do the exterior -- it's supposed to be consistent with what you approve in the  
36 development plan in terms of form and so forth, but no the materials are not something  
37 that you're -- you're approving as a part of this. That can -- that can change.

38  
39 Councilmember Knapp,  
40 By approving the this, do we also then lock in the notion that the HOC portion of this can  
41 only take place on lot 5? There is no further consideration for the potential of looking at  
42 lot 5 versus lot 1?

43  
44 Marty Grossman,



September 19, 2006

1 Yes, yes, that would be locked into lot 5.

2  
3 Bill Kominers,  
4 Yes.

5  
6 Councilmember Knapp,  
7 Okay

8  
9 Council President Leventhal,  
10 Here's what we really need to move to, folks. What – what we need to move to very  
11 soon is, we need to close the hearing record and then we can get into debate. If the  
12 questions are intended to elicit information to help us in debate or to help us decide how  
13 to vote, what we really need to end oral argument, end this hearing and then, I  
14 anticipate some Council member will offer a motion and then we'll be debating the  
15 motion. In addition, if the motion is anything other than an approval of the resolution  
16 drafted by Mr. Grossman to remand, if the motion is anything other than that, we will  
17 only today cast a straw vote because we do not have drafted a resolution before us that  
18 states anything other than remand, so if we want to just go ahead and -- and move to  
19 remand, any Council member can do that and we can pass that in final form today. If  
20 the motion is anything other than to remand, we can debate it and we can take a straw  
21 vote and then it'll come back before us. So, can we now close the record or are there  
22 still questions for the applicant or for the opponents Mr. Silverman?

23  
24 Councilmember Silverman,  
25 I'm sorry, could you clarify this? If we were to approve this as the applicant has  
26 requested, the Planning Board still has the authority, does it not, to reduce the height of  
27 the building?

28  
29 Unknown Speaker,  
30 This doesn't happen.

31  
32 Councilmember Silverman,  
33 I'm asking whether the Planning Board—

34  
35 Unknown Speaker,  
36 They've already approved it once.

37  
38 Councilmember Silverman,  
39 I'm asking whether the Planning Board has the ability to reduce the height of the  
40 building?

41  
42 Pat Harris,  
43 Technically they do.



September 19, 2006

1 Bill Kominers,  
2 I think, technically, yes.

3  
4 Councilmember Silverman,  
5 I mean, my understanding is we're doing a rezoning here.

6  
7 Bill Kominers,  
8 You're – you're setting the top.

9  
10 Councilmember Silverman,  
11 Right. We're setting the maximum. In the case of – in the Triumph case that we had,  
12 they came in for 100 feet. The debate was whether or not we wanted to allow that to be  
13 at potentially at 100 feet recognizing that the Planning Board could pick a number below  
14 that. The Council voted unanimously that that was too high.

15  
16 Bill Kominers,  
17 It certainly can be done in this case because the binding element is the building will  
18 have a maximum height of 71 feet. If the – if the binding element said something else  
19 then you would be binding the –

20  
21 Unknown Speaker,  
22 Okay.

23  
24 Councilmember Silverman,  
25 Thank you

26  
27 Council President Leventhal,  
28 Okay, may I now consider the oral argument portion and the hearing record to be  
29 closed? Without objection. This concludes all arguments. The hearing record is now  
30 closed. Does any Councilmember have a motion to offer? Ms. Floreen.

31  
32 Councilmember Floreen,  
33 Yes. You know, we did have this conversation several years ago when we went through  
34 the very difficult work on – on how we get MPDU's constructed on site and we did say  
35 okay, we'll take it on. We'll make that decision after recommendations on this point and  
36 – and here we are. I'm going to move approval of the project as submitted. The number  
37 of units are less than what are recommended in the master plan that encourages  
38 density in CBD's and near metro stations. The height issue, it complies basically with  
39 the height in the master plan, plus our process, the ark process. And I'll just make a  
40 comment, we set up a system that did have an inherent conflict of interest on this ark  
41 situation 'cause basically, we asked the people charged with – with an obligation to – to  
42 try to find more affordable housing to make a call as to the financial feasibility of the  
43 proposal. That's their job. I don't know if you can escape that – that particular challenge.  
44 It's not so much as compatibility issue for them, as a math issue, financial issue. So, just



September 19, 2006

1 make that comment for the – for the community. But I do resist the concept that we let  
2 projects build to the lowest levels of height or design, or different levels define what an  
3 urban environment should be particularly when I think the—it's the neighborhoods  
4 outside the community where -- where these height issues are most important. Single  
5 family detached homes adjacent to central business districts require special attention  
6 and support. I've always believed that. I think that's why the -- the tenting objective has  
7 always been an element in this plan and – and should always be. The issue of the – the  
8 folks who -- of the developments who have chosen to design themselves differently for  
9 beautiful objectives, I don't think should drive some of the other criteria enunciated in  
10 the master plan so I think a remand would simply get us fewer units. Certainly we'd get  
11 fewer affordable units and I suspect set --set a standard under this analysis for  
12 compatibility that would require fewer units in the future throughout the central business  
13 district. So that's my motion.

14  
15 Council President Leventhal,  
16 Okay, is there a second?

17  
18 Unknown Speaker,  
19 There's no second.

20  
21 Council President Leventhal,  
22 A motion has been made to approve the Planning Board's recommendation. Is there a  
23 second?

24  
25 Councilmember Subin,  
26 Yes.

27  
28 Council President Leventhal,  
29 The motion is made by Ms. Floreen and seconded by Mr. Subin. Debate on the motion  
30 Mr. Denis.

31  
32 Councilmember Denis,  
33 Thank you Mr. President, this may wind up as a sequel to raiders of the lost ark. The ark  
34 has been described to and maybe I've learned today why the steppe pyramid was built  
35 in the desert at Ghiza rather than in downtown Thebes. [laughter] Must have had a  
36 master plan in the 21<sup>st</sup> dynasty perhaps. But, I do believe that based upon the testimony  
37 and documentary evidence that there's every reason for the Council to be sensitive to  
38 the height recommendations in the master plan and to be sensitive as well to  
39 compatibility issues with nearby communities. I – I do believe that the development plan  
40 should better conform with the master plan guidelines for height and the low-rise urban  
41 village concept and I agree that the issues raised by the Hearing Examiner merit further  
42 review so I would therefore support a remand and do not intend to support this  
43 particular motion. Thank you, Mr. President.



September 19, 2006

1 Council President Leventhal,  
2 Mr. Andrews.

3  
4 Councilmember Andrews

5 Thank you, Mr. President. Well, I agree with those – those basic comments that Mr.  
6 Denis just made. I don't think that as proposed that it's compatible and I think there  
7 needs to be further exploration of the possibility achieving the same or similar number of  
8 units in a – a shorter building. I don't know what the size of the units is as proposed in  
9 terms of square footage, perhaps it's in here, perhaps I missed here, but certainly one  
10 option is making smaller units in order to achieve the same density in a shorter building  
11 and that's one way to get low-rise, high-density, is to make units smaller.

12  
13 Council President Leventhal,  
14 Mr. Subin.

15  
16 Councilmember Subin,

17 I asked the – the – the number of questions I did on the issue of the elevation and the  
18 sun to determine what the full impact of this building would – would be because there  
19 clearly is a clash of public interest here. One is the issue of compatibility and the other is  
20 the public interest that the Council President brought up earlier of – of MPDU's, work  
21 force housing and this transitional housing. And I think it's – it's clearly time for this  
22 entire community, not this one narrow community, but the County as a community to  
23 come to grips with the fact that there is a massive call for affordable housing, for more  
24 MPDU's and for work force housing. And the fact that the bottom line is there is going to  
25 be an impact. There just is. The economics don't work without this impact. Ten years  
26 ago the price of land made up about 25 percent of a house. Today that is 40 to 50  
27 percent of a house when you purchase it. So that price of the land is clearly increasing  
28 the price of the homes that we buy and putting MPDU's, work force housing and all out  
29 – out of reach. Without the MPDU's in this project, there probably is no question. There  
30 probably is no issue. There probably is no – no recommendation for a remand. But you  
31 now add the new MPDU laws, the new work force housing laws, the issues that we  
32 have at -- at Shady Grove, if and when that gets built out and the economics of these  
33 projects simply do not work without the impacts that are going to be there. And we, as a  
34 County, cannot have it both ways. We're not going to get the MPDU's. We're not going  
35 to get the work force housing. We're not going to get the affordable housing without the  
36 type of impacts that we have here. It isn't going to happen. And – and we all have to  
37 stop fooling ourselves that we can have it both ways. I'm sure the developers that – that  
38 – that the developers here were not terribly enthralled with the idea of having to put in  
39 MPDU's. They haven't from day one. And – and – and any public statements to the  
40 contrary from them are just not believable. But they're here. It is the law. It – it – it is the  
41 policy and it is the intent and I think the Council president was absolutely correct earlier  
42 when he asked about that. The impact of not going ahead isn't four months. Four  
43 months is the procedural impact. Because if you go ahead with a remand then the  
44 developers whether one cares or doesn't care, the reality is the developer has to go





September 19, 2006

1 back, redo all the plans, redo all the economics, redo all the finances, redo everything. It  
2 won't be four months. The four months is – is the procedural time that it is going to take  
3 once the plans are redone. And that – that assumes that the financing will – will still  
4 work, which it probably would if you took the MPDU's out but the rest -- the rest of the  
5 stuff has to be done. So it will be another year, year and a half, two years before the  
6 transitional housing can move ahead. Before we get whatever MPDU's might be there  
7 and – and I just do not think that that is acceptable. And again, I think we as a County  
8 have to come to grips with the reality of what the impact is going to be of MPDU and  
9 work force housing. It means higher buildings and it means higher density. Across the  
10 board, anywhere and everywhere. So I will vote to support the motion with – with the  
11 issue of the MPDU's and the HOC housing as – as my prime motivation here.

12  
13 Council President Leventhal,  
14 Vice-president Praisner

15  
16 Councilmember Praisner

17 There is no doubt that there is a clash here of policies and approaches and there is no  
18 doubt in my mind that what we have to do is look more rigorously at future master plans  
19 and how we draft them so that we are clear both in illustrative pictures and in what our  
20 language says and does that we are clear about what may be perception, reality,  
21 consistency and inconsistency. I do think there's a clash of policy but I don't think it's as  
22 strict and rigid as – as some of my colleagues may see it. There is still a capacity to  
23 build MPDU's. This isn't a no MPDU kind of choice. The reality is we are also, if we  
24 approve this as currently designed, creating an anomaly by a house in the middle of the  
25 block that will automatically become inconsistent with everything else around it and will  
26 stick out and be the HOC building, because it will be inconsistent with everything else  
27 that we have. I think that when we design communities, whether we are talking about  
28 higher density or what the density or the – or the height may be, we also have to look at  
29 the livability of those communities and that means the livability whether you live in a  
30 suburban setting or in a central business district. Certainly central business districts will  
31 have higher heights. But they also have some sense of compatible and community  
32 associated with them as well. I start with the fact that I think we need to send a  
33 message to folks who look at parcels, that they should look at the design guidelines  
34 within the master plans and work from those design guidelines and that is what I see in  
35 Mr. Grossman's comments about urging a remand. This is not a no MPDU if you let it go  
36 back kind of concept and with due respect to my colleagues, some of the delays of the  
37 advocacy making in order to deal with the HOC parcel as a part of this. HOC parcel  
38 could have gone forward and we would have had those units and those 12 units are  
39 separate and apart from the nine MPDU's. So, those 12 units are a given. I'm still -- the  
40 only question I have is I'm not clear why one cannot at this point rezone the parcel that  
41 is the HOC parcel for the future as part of this directive on the remand automatically  
42 ,since they are individual parcels at this point, automatically do the TSR rezoning on this  
43 piece. But if you tell me that cannot legally be done because they are joined, then I  
44 accept that. But I think remanding is where I am at this point. I would be comfortable



September 19, 2006

1 with taking that middle parcel that is the future HOC parcel as opposed to the existing  
2 one which I understand already is zoned TSR. I would be happy to rezone that HOC  
3 parcel TSR in this remand of the rest of the plan. I'm comfortable with doing that. But I  
4 do support a remand.

5  
6 Council President Leventhal,  
7 Let me ask that question again. I asked it before but I'm still confused by the answer.  
8 We're the County Council. We're the ones who adopt the zoning laws Why is it one  
9 more time that we cannot simply take, I mean, these items on our agenda application G-  
10 842 and development plan amendment 06-2 have been grouped together on our  
11 agenda, but that's just clerical. I mean, why could we, the County Council, not approve  
12 DPA 06-2 now while a remand goes forward? Explain it one more time. We -- we do  
13 these things. We are the ones who determine the zoning of -- of parcels.

14  
15 Marty Grossman,  
16 06-2 allows the -- the rezoning of -- of or allows the exchange of the land from the prior  
17 approvals, but the application for G-842 is calling for the rezoning of the lot 5 on which  
18 DPA and which the -- the HOC housing would exist --

19  
20 Council President Leventhal,  
21 Could we the County Council not adopt a substitute motion that would provide for the  
22 HOC project to move forward under the applicable zoning and still allow for the  
23 residential, the condo project to proceed at a different pace.

24  
25 Marty Grossman,  
26 I don't think it would be right, as the Council -- it wouldn't meet the minimum TSR  
27 square footage requirements standing by itself, but aside from that you have notice  
28 problems. This went forward as a proposal together and I don't that you can at this one  
29 point say that we will take one piece of what has been proposed and approve it and  
30 rezone it.

31  
32 Councilmember Praisner,  
33 Okay, I accept that. But, I have a question, if I may and if I can.

34  
35 Councilmember Praisner  
36 How -- how did the individual parcel of HOC get rezoned TSR in the first place?  
37 [laughter] stay with us.

38  
39 Council President Leventhal,  
40 Alright, Mr. Kominers go ahead. Mr. Kominers go ahead

41  
42 Bill Kominers,  
43 It -- it -- it was as a part of the rezoning of the Edgemoor City Homes --



September 19, 2006

1 Councilmember Praisner

2 Okay, but it was a parcel sitting alone that in and of itself would not have met the TSR  
3 zone in it's – in it's, combined by the other parcel elsewhere, which isn't an adjoined  
4 parcel to it.

5  
6 Bill Kominers,

7 Well, it is, but on the north end, it's adjoined.

8  
9 Councilmember Praisner

10 Alright, I'll accept your point. But my point is this: it creates – it created an island in that  
11 strip of homes with that parcel zoned TSR which in and of itself, if we never did the  
12 other rezoning could have caused a problem for that parcel to be able to meet the TSR  
13 requirements; correct?

14  
15 Bill Kominers,

16 Correct.

17  
18 Councilmember Praisner

19 Thank you.

20  
21 Council President Leventhal,

22 I – I – I still am not clear on the answer to my question. I'm sorry. I mean, if -- if we  
23 determine that a particular parcel should go forward under a particular zone, who is to  
24 stop us? We – we write the zoning laws.

25  
26 Marty Grossman,

27 Well, you have to follow the – the procedures that have been set up because the  
28 Council cannot act arbitrarily. The point is that the – that right now you have lot 3 which  
29 is where the – where the HOC was already approved is in the TSR zone but Lot 5,  
30 which is where it would move to under the DPA 06-2 is currently still in the R60 zone. It  
31 would have to be rezoned in order for the – for the HOC building to proceed on that lot. It  
32 can't be rezoned by itself because it's not a large enough piece of land under the zoning  
33 ordinance to be in the TSR zone. There's a minimum amount of square footage for  
34 something to be in the TSR zone.

35  
36 Council President Leventhal,

37 But if we introduced a zoning text amendment to make that occur could we do that?

38  
39 Marty Grossman,

40 Well, if you went through that procedure, but you'd have to go through the zoning text  
41 amendment procedure.

42  
43 Council President Leventhal,



September 19, 2006

1 You'd have to have notice, we'd have to have a public hearing. It might take about a  
2 month.

3  
4 Bill Kominers,

5 If you were – if you were – if you were to reduce the square footage minimum  
6 requirements for the TSR zone to something to fit that parcel, then yes, you can go  
7 forward as a separate application and rezone that parcel. I think from a practical  
8 standpoint, since the owner of that building currently has a building that they occupy  
9 there, that they're not going to give up to HOC to tear down and build this one except as  
10 a part of a larger project. From a practical standpoint. It's not going to happen.

11  
12 Council President Leventhal,

13 The owner of the building that it needs to swap with is not going to go along because  
14 they own the building and there's no benefit from it.

15  
16 Bill Kominers,

17 Not unless they – they give up their building in return for getting a part of the bigger  
18 building. That's the practical side.

19  
20 Council President Leventhal,

21 So now it's in order, now if we go back to where things were originally, where you had  
22 the HOC project right in the middle and these other two parcels on either side, you  
23 could not get 60 units if you built those two separately and you – and therefore you  
24 could not get the 9 MPDU's, if you built around on either side you would not be able to  
25 get--

26  
27 Pat Harris,

28 You would only be able to get single family homes on each of the remaining two lots on  
29 either side.

30  
31 Council President Leventhal,

32 Under the existing zone.

33  
34 Pat Harris,

35 Exactly.

36  
37 Marty Grossman,

38 We're going outside of the record on this.

39  
40 Council President Leventhal,

41 Well, now we're in debate, I mean we're --

42  
43 Pat Harris,

44 I apologize.

September 19, 2006



1  
2 Council President Leventhal,  
3 Okay, we are debating the motion offered by Ms. Floreen. Mr. Subin.

4  
5 Councilmember Subin,  
6 I may not be as learned as some, but I do understand the process. I recognize that  
7 under any of the plans, there will be MPDU's. That's not the question. The question is  
8 how many and how serious is this body about its professions to have housing available  
9 for those who can't afford to buy what is market housing? How serious is this body, and  
10 how serious are the plaintiff cries over the last couple of months that we need to do it?  
11 It's never the right place. It's never the right time. It's never the right set of  
12 circumstances. It's never right. It's never right because -- fill in the blank. Fill it in. The  
13 plaintiff before us will -- will maximize that. I am not insensitive to the issues of the  
14 opposition that they have brought up. They -- they are considerations. I believe that for  
15 the MPDU's I would be opposed to this plan, too. But it is --it is for me the issue of the  
16 MPDU's and getting them out there. I challenge today, and I will continue to challenge  
17 the County Council in terms of its seriousness of providing affordable housing to people  
18 who cannot afford the market rates in this County. 'Cause if you all think there's a traffic  
19 problem now; wait until Mr. -- gets his economic development plan going and all the  
20 folks who get those jobs move to Frederick and Carroll Counties. And then what is  
21 going to happen to the folks who today qualify for MPDU or work force housing? It's not  
22 a question of will there be. It's a question of will there ever be a sufficient number, and  
23 when do we start doing it.

24  
25 Council President Leventhal,  
26 I'm going to vote for the motion. I think this is a classic dilemma. There's one motion.  
27 The motion is to approve the application by the Planning Board. That's the motion now  
28 before the Council. No, the -- Mr. Denis is opposed to the motion, so we understand  
29 that we're just casting a straw vote now. You know, I don't -- I don't think a political  
30 columnist could have written a better scenario one week after the primary election to be  
31 faced with a choice between a --a -- a community that's unhappy with a proposal by a  
32 developer than the alternative in addition housing the homeless. I mean, this is as  
33 classic a dilemma as you can possibly have. It is -- it is a difficult dilemma. We're all  
34 sympathetic to this concerns of the home owners. I don't think we could describe a  
35 clearer candidly more difficult dilemma that is before us, a block from metro, as to  
36 whether we are -- two blocks from metro—as to whether or not we are going to adhere  
37 to the intent as Mr. Subin said of the MPDU law amendments that we passed just two  
38 years ago. The very same voices in the community who criticize us for not having  
39 affordable housing are going to be the very same voices in the community who will  
40 criticize us for approving a developer's proposal. The very same people. And so, no  
41 matter where we come out on this dilemma, some will be unhappy and that is the  
42 classic -- that is the joy of serving on the County Council.

43  
44 Brent Polkes,



September 19, 2006

1 For the record, can I just say.

2  
3 Council President Leventhal,

4 No, I'm sorry, you're out of order. It's the County Council's turn now. So, I – I We're  
5 sympathetic to the concerns of the homeowners, we really are but the reality is this is a  
6 property right at metro. We have had debate, as my colleagues have said, will we or will  
7 be not insist on affordable housing in downtown Bethesda or when a conflict arises as  
8 every time a proposal like this comes up conflict will arise will we say, no, not here, not  
9 now. So, with regret and acknowledging the dilemma and knowing I'm going to pay for  
10 this, I will vote for the motion. Those in favor. [laughter] Those in favor of the motion.  
11 This is a straw vote. We will come back next week after staff has drafted – after staff  
12 has – well, we're going and try to get it by next week. Let's get this resolved. I mean,  
13 part of this is in the interest of exp -- for me, let me tell you, there is nothing more  
14 important to me than expediting the construction of units to house the formerly  
15 homeless. That weighs heavily on my mind with respect to this. Understanding all the  
16 circumstance that led us to this point. So let us not delay further than one week with a  
17 resolution that this Council can act upon next week and those in favor of the motion will  
18 signify by raising hands. It is Mr. Knapp, Mr. Leventhal, Mr. Silverman, Mr. Subin and  
19 Ms. Floreen. Those opposed will signify by raising their hands. It is Mr. Andrews, Mr.  
20 Perez, Mrs. Praisner and Mr. Denis. The motion carries 5 to 4. Now we face a difficult  
21 choice here. Which is that we announced the public hearing at 1:30 expecting that be  
22 would adjourn at around noon. We've been debating this dilemma here in downtown  
23 Bethesda straight through our lunch hour. We have hungry Council members. Can we  
24 finish the public hearing?

25  
26 Unknown Speaker,  
27 Yeah.

28  
29 Council President Leventhal,  
30 Just go.

31  
32 Unknown Speaker,  
33 Yeah.

34  
35 Council President Leventhal,  
36 Just go, go, go—

37  
38 David O'Bryon,  
39 Can I just say this one thing, are you finished the record now?

40  
41 Council President Leventhal,  
42 We already closed the record, Mr. O'Bryon.

43  
44 David O'Bryon,





September 19, 2006

1 We have never opposed MPD units and we're left with an impression here that our  
2 community is –

3  
4 Council President Leventhal,  
5 Nobody suggested that Mr. O'Bryon.

6  
7 David O'Bryon,  
8 That I really take exception to. It was never my intent to suggest that the community  
9 oppose the --.

10  
11 Brent Polkes,  
12 I feel that's where I ended up. Maybe you guys already used your eminent domain rights  
13 to build the affordable housing that you say you want because leaving it – constantly  
14 puts their economic interests at the forefront of what's going to happen.

15  
16 Council President Leventhal,  
17 I'll be delighted to meet with you in the future.

18 ~~Unknown Speaker,~~  
19 It was never my intent to mischaracterize the homeowners.

20  
21 David O'Bryon,  
22 I just needed to be – Mike, I've known you for 25 years. I just didn't want to be left with  
23 that impression at all.

24  
25 Council President Leventhal,  
26 Never did I suggest that the homeowners were opposed to the affordable units. I – I  
27 didn't mean to suggest that.

28  
29 Councilmember Subin,  
30 No, I think you had the opportunity when I said why.

31  
32 Council President Leventhal,  
33 Okay. I need a speaker's list and a script.

34  
35 Unknown Speaker,  
36 Yeah.

37  
38 Council President Leventhal,  
39 Okay. We're going to proceed with the public hearing now. Conversations need to be  
40 taken to the hallway.

41  
42 Multiple speakers,  
43 [INAUDIBLE]





September 19, 2006

1 Council President Leventhal,  
2 Okay, ladies and gentlemen this is a public hearing on agenda item number 13, bill  
3 3406 work release, prerelease programs, amendments, the public safety committee is  
4 tentatively scheduled to up this item on September 25th. Comments may be submitted  
5 for the record by the close of business Wednesday, September 20th. We have one  
6 witness, Mr. Wayne Goldstein. Come on up Wayne. Before beginning your  
7 presentation, please state your name and address clearly for the record. I understand  
8 Mr. Goldstein will also speak on agenda items number 37-06 and 36-06. Please  
9 proceed.

10  
11 Wayne Goldstein,  
12 I'm Wayne Goldstein. 3009 Jennings Road, Kensington, Maryland, 20895, speaking for  
13 myself. I'm a member of the Montgomery County Civic Federation which has been  
14 against everything since 1925. Yesterday a colleague said as we watched votes being  
15 counted that the only thing that Montgomery County is the best at is bragging that it is  
16 the best at everything. We continue to learn that we aren't even the best at bragging as  
17 evidence of our mediocrity periodically manages to make us a national spectacle.  
18 However, here is one thing we are the best at. It is how we jail and rehabilitate people  
19 who commit crimes in our County. Thanks to our commitment to direct supervision in  
20 our jails, the use of work prerelease and the good sense to hire one of the best in the  
21 business to manage these programs, we have legitimate bragging rights in this area.  
22 The proposed amendments will allow the work prerelease program to demand greater  
23 accountability of inmates who participate and will allow more time to teach such inmates  
24 what it really means to be an – be adult in our society. Fortunately politicians who make  
25 a habit of trying to blame others for their mistakes, unlike inmates who do the same,  
26 usually behave responsibly enough to keep out of our excellent jail. Please approve  
27 these amendments. The lesson of our historic preservation commission is that it is more  
28 effective and less subject to political pressures if it is directly associated with MNCPPC  
29 than with the Office of the County Executive. The same approach should be considered  
30 for the forest preservation advisory committee FPAC, especially if it becomes a source  
31 of information that is taken seriously by all. There are many questions about when it  
32 should begin and what it should do, so as we amend our forest conservation law and  
33 write an urban tree ordinance, we will want to ensure a central vigorous and continuing  
34 role for FPAC to help stop the relentless loss of forest cover and individual trees and to  
35 establish and a tree canopy in all available places. Just as the Council has introduced a  
36 pale green building program, it now considers another timid approach to motivating  
37 builders to build green. Other jurisdictions are far ahead of this County, and we aren't  
38 even trying to catch up, much less surpass what others are doing today. I am a strong  
39 supporter of such tax credits as the historic preservation tax credit because it mitigates  
40 the tremendous complexity and cost to restore and maintain historic buildings. However,  
41 generally rewarding someone who builds to the lead silver commercial standard is just  
42 gilding the lily as the costs to reach that level have become so minimal and the energy  
43 savings pay back any extra outlay so quickly. It's time for the County to require all  
44 commercial buildings to be lead silver as a matter of course allowing time to educate



September 19, 2006

1 convention builders as to what it takes to get to lead silver. The County Council should  
2 require all government builder funded buildings to be lead gold. It makes no sense to  
3 provide good incentives for builders --it makes sense to provide good incentives for  
4 builders to seek lead gold and tremendous incentives to seek lead platinum. The  
5 County should plan on building at least one lead platinum building per year initially. It's  
6 also time to require lead on new residential construction and commercial and residential  
7 renovations and to plan on a steep learning curve using new regulations and necessary  
8 financial and regulatory incentives. However, there needs to be a moratorium in this  
9 County -- on this County and its political leaders bragging about anything at all until it  
10 can be objectively proven that we are among the best or are the best. As for budget  
11 priorities, it's time to provide enough MNCPPC staff to do a new survey and potentially  
12 start buildings throughout Montgomery County. The first survey done in the early 70s  
13 and completed in 1976 documented many building that predated 1925. Thirty years has  
14 passed and it's time to spend several years to document those commercial and  
15 residential buildings dating from 1925 to 1960 as well as older buildings that were  
16 missed the first time. Historic preservation is as important a public policy as any other in  
17 this County and it deserves funding for the very modest additional resources that will  
18 allow it to continue to be one of the best run programs in the County. Thank you.

19  
20 Council President Leventhal,

21 Okay, thank you Mr. Goldstein. Your testimony gave me the opportunity to raise  
22 something that--gives me the opportunity to raise something that I didn't mention and I  
23 don't know if Mr. Grossman is in the room. One of the lead specifications calls for very  
24 large windows because they reduce the need for interior lighting and so we --this is  
25 another example. When -- when we move in the direction of adopting green building  
26 requirements for new construction, which as Mr. Goldstein knows, I'm advocating for  
27 and which I hope this Council will adopt in the month of October and I'm wide open to  
28 adopting minimal thresholds that are higher than those in the bill that I introduced, so I'm  
29 very, very open to moving in that direction this month in the T&E committee and the full  
30 Council. But a concern about lots of glass versus lots of brick, which is something we  
31 just debated during the middle of the day here, we -- we -- when we move in the  
32 direction of green building standards, we may see a lot more buildings with lots of glass  
33 and so those who want to see more brick, that may come into conflict with green  
34 buildings recommendations that you have a lot of ambient light, so I just wanted to  
35 make that point. And that's it. Thanks, Wayne.

36  
37 Council President Leventhal,

38 And now. Good afternoon, ladies and gentlemen. This is a public hearing on bill 3506  
39 property tax credits senior citizens which would provide a property tax credit for certain  
40 senior citizens of limited income and generally amend County law regarding property  
41 tax credits. The management and fiscal policy committee is tentatively scheduled to  
42 take up the matter on September 25<sup>th</sup> at 9:30. Anyone who wants to submit additional  
43 information for the Council to consider should do so by the close of business  
44 Wednesday, September 20<sup>th</sup>. We have one witness who has signed up. Mr. Irwin



September 19, 2006

1 Goldbloom. Good afternoon Mr. Goldbloom. Please press your button there and begin.  
2 You need to state your name at the beginning of your testimony for the record.

3  
4 Irwin Goldbloom,  
5 Thank you.

6  
7 Council President Leventhal,  
8 Thank you, sir.

9  
10 Irwin Goldbloom,  
11 Good afternoon. I am Irwin goldbloom a member of the Montgomery County  
12 Commission on Aging. I reside at 2805 Daniel Road in Chevy Chase. I'm here today to  
13 testify on behalf of the commission in support of bill 3506, property tax credit senior  
14 citizens. The commission recognizes the impact that increased property values and its  
15 consequent tax burden has on our senior population. Many Montgomery County seniors  
16 rely upon retirement income that does not keep pace with the increased cost of living  
17 and the commission has an overarching goal to encourage the development of County  
18 policies that will facilitate the ability of Montgomery County seniors to remain in the  
19 County living in their own homes. This legislation is consistent with and furthers the  
20 commission's goals and we therefore support its passage. Under existing law,  
21 Montgomery County residents, regardless of age, who come within the – net worth  
22 limits are eligible for both state and County home owners tax credits. This bill proposes  
23 that individuals at least 70 years old who qualify for the homeowners property tax credit  
24 would be eligible for an additional tax credit tentatively proposed at 25 percent.  
25 Currently the average tax credit received by residents of the County is \$900. This  
26 property tax credit program reduces County revenues by only 4.5 million dollars. An  
27 additional 25 percent on the average cost – average credit of \$900 per seniors at least  
28 70 years of age would result in an average credit of \$1,125 dollars. Increasing the credit  
29 percentage to 50 percent would increase the average credits to \$1,350. We understand  
30 that the existing property tax credit is used by only 10 percent of persons eligible for the  
31 program. An increase for seniors in the range of 50 percent of the existing credit based  
32 on the current level of usage would therefore have a relatively insignificant affect on  
33 County revenues. The commission has engaged in a summer study on property tax  
34 relief issues. In the course of this study, we have obtained some useful facts from the  
35 most recent census. For example 61 percent of Montgomery County seniors age 75 and  
36 older and 48 percent of 65 to 74 year olds have an annual income of less than \$60,000  
37 annually. Almost 50,000 Montgomery County home owners are living in the same house  
38 they moved into prior to 1979. Many of these home owners would benefit from this  
39 legislation. We therefore urge that Montgomery County take the lead in helping its  
40 residents receive the property tax credits for which they are eligible by providing  
41 education and outreach personnel to inform and assist our residents in the application  
42 process. In addition to supporting this proposed legislation, we want to express our  
43 concern about the low rate of participation in the existing property tax relief program.  
44 We believe this the is due to the complexity of the application form and process and a



September 19, 2006

1 user unfriendly administration of the program at the state level. The commission is  
2 interested in working with the Council to address these problems and increase the rate  
3 of participation in the property tax program. Thank you.

4  
5 Council President Leventhal,  
6 Thank you, Mr. Goldbloom. This is a public h—Oh, was there a question? Yeah, Mrs.  
7 Praisner – go ahead.

8  
9 Councilmember Praisner,  
10 There was a comment. The packet does not reflect the fact that when the legislation  
11 was introduced Mr. Knapp, Mr. Andrews Ms. Floreen and Mr. Silverstein signed on as  
12 cosponsors. I wanted to make sure that was known to the public since the packet for  
13 today did not include that. Secondly, I would appreciate any thoughts that you had from  
14 the work that you're doing and any ways in which you think the commission on aging  
15 can help us with the outreach piece. Obviously not now, but in the committee meeting I  
16 would appreciate any input.

17  
18 Council President Leventhal,  
19 Thank you very much. We will look into that.

20  
21 Councilmember Praisner  
22 Thank you.

23  
24 Council President Leventhal,  
25 Thank you Mr. Goldbloom for your testimony. We appreciate it.

26  
27 Council President Leventhal,  
28 This is a public hearing on bill 36-06. Forest Preservation Advisory Committee  
29 establishment and the Transportation and Environment Committee is going to take this  
30 up on September 26th. We're going to have the distinguished chairman of the Planning  
31 Board address us first. And then we also have Cynthia Fain, Karen Madsen, Tony – you  
32 can stay Tony, it's okay. Cynthia Fain, Caren Madsen, Tony Hausner and Linda Marks,  
33 please join us at the witness table if you're here. I see Karen Madsen is here and – but  
34 Chairman Hanson. Please begin.

35  
36 Chairman Hanson,  
37 Thank you, Mr. President. The Planning Board has reviewed the bill and we just have a  
38 few comments we sent you a letter on, I'll just summarize. First, we don't think it's  
39 necessary to enact legislation to create a committee. You do that all the time. And no  
40 need to do it by legislation. More important, however, there are -- there's quite a  
41 difference between interconnected forest areas and the existing forest conservation law  
42 and various kinds of individual trees or – or situations on – on particular lots. I – I think –  
43 wasn't wise to enact a law that's intended to protect interconnected forests in order to  
44 address the issue of urban forestry. There are a lot of overlapping and converging



September 19, 2006

1 environmental issues right now coming to the floor of which the – the saving of trees is –  
2 is one. The protection of water sheds in general is another. Urban forestry is another.  
3 We have a technical committee working right now. – committee with other stakeholders  
4 that's looking at the administration of the forest conservation act. But it seemed to the  
5 board that it would be advisable rather than dealing with these things piecemeal, to see  
6 if we can put them into a more comprehensive context, and we will be coming to you,  
7 we will be prepared to do it at the semi-annual work session next month. And we're  
8 already working on the fiscal '08 budget to bring together several of the environmental  
9 and energy issues into a forum that they can be dealt with in a comprehensive way in  
10 which we can deal not only with the policy analysis issues but also with the regulatory  
11 issues and bring together a package that we think may be more desirable than hitting it  
12 a piece at a time.

13  
14 Council President Leventhal,  
15 Thank you Chairman Hanson. Cynthia Fain.

16  
17 Cynthia Fain,

18 My name is Cynthia Fain. I'm a trained Conservation Easement Monitor with the  
19 Maryland Environmental Trust. I also served as a member of the Montgomery Urban  
20 Forest Alliance. As a lifelong resident of Montgomery County I have seen tremendous  
21 deterioration to our once vast tracts of forest. Bill number 36-06 which establishes a  
22 forest preservation advisory committee is an important first step in improving forest  
23 protection laws. We also need a tree ordinance that will address the growing problem of  
24 tree loss in communities that are facing redevelopment. We have seen too many stands  
25 of mature trees cut down to make way for new homes on barren lots. It is obvious from  
26 the enormous loss of trees in the forest that our current forest conservation law is in  
27 urgent need of being strengthened. The current law does not emphasize saving existing  
28 trees and forest. Instead it allows developers to plant trees at sites far away from the  
29 areas that have been deforested. This tactic of trying to replace what was destroyed is  
30 clearly not working. What we need is an amended law that amends forest. The  
31 establishment of a forest preservation advisory committee is overdue. The citizens of  
32 Montgomery County need their voices heard on issues of tree preservation. Citizens are  
33 tired of seeing trees being cut down and green spaces being paved over. Whether the  
34 development occurs as in fill or suburban sprawl, we need more protection for trees. A  
35 revitalized law will also need to address problems with the enforcement of  
36 conservation easements. Under the current law, too many easements are not being  
37 properly maintained. I lived in Rockville, Maryland next to an acre of land that was  
38 supposed to be reforesting as part of a Maryland national capital Park and Planning  
39 conservation easement. The owners of the easement had illegally mowed the acre for  
40 several years and no reforestation is occurring there. If conservation easements are not  
41 properly monitored and enforced, we will continue to lose forest and trees. Another  
42 failure of the existing law is that it does not provide clear language on protecting  
43 specimen or champion trees. the property I mentioned above also had a specimen ash  
44 tree on it. This specimen tree was under another conservation easement from Park and





September 19, 2006

1 Planning. A developer petitioned the Planning Board to have the easement removed  
2 from the tree. What good is a conservation easement if developers can simply have the  
3 easement removed in order to build? This is another example of why our conservation  
4 forest law needs to be clearer and stronger in its goals. The failure to protect our forest  
5 has also resulted in the loss of wildlife habitat, thousands of wild animals such as deer  
6 and fox lose their habitat and natural trails as a result of the forest law – forest loss. A  
7 new forest conservation law must address the needs of wildlife by preserving more  
8 continuous forest habitat. We must move quickly and decisively to begin implementing a  
9 tree ordinance, a forest preservation advisory committee and a stronger more effective  
10 forest conservation law. Thank you.

11  
12 Council President Leventhal,  
13 Thank you very much. Caren Madsen.

14  
15 Caren Madsen,  
16 Thank you. For the – for the record. I'm Caren Madsen. I'm here to represent the  
17 Montgomery County Civic Federation Environment Committee. We appreciate that you  
18 are considering this legislation, and that you've acted in the past year to strengthen  
19 penalties for violations of our forest conservation law. It looks like we might be ready to  
20 take the next step. Our County has experienced tree loss at an average rate of about  
21 2,000 acres a year for the past 27 years. Forest covered 45 percent of the County in  
22 1973 and then 28 percent in -- in 2000. The loss of about 54,000 acres since 1973 and  
23 probably more since the 2000 data collection. While the County is well below a 40  
24 percent threshold necessary for a healthy environment, urban areas like Silver Spring  
25 have tree canopy of less than 14 percent. In 2000, the County executive established a  
26 forest preservation task force which determined that urban residential areas need at  
27 least 25 percent in tree cover. So our urban areas have actually fallen below the County  
28 accepted threshold. It's been said that if you don't have a place at the table, you might  
29 be on the menu. [laughter] Never heard that, huh? Look around the County where as  
30 we speak, an urban – an acre of urban forest in the Silver Spring neighborhood is being  
31 clear cut to be replaced by six large houses and a road. Consider Bethesda where  
32 mansions are replacing smaller homes and resulting in tree loss. Clearly urban trees are  
33 on the menu in Montgomery County. We tried and then failed to establish a permanent  
34 public forum for tree preservation in our County 14 years ago. When the original forest  
35 conservation law was drafted in '91 setting up a true commission was included in the  
36 bill. This would have given stakeholders a platform for addressing mature tree  
37 preservation, reforestation and planting new trees. At that time the business and  
38 development committee lobbied against the provision and took the position that our  
39 County law should in no way be stronger than the forest law. The result was a tree  
40 commission that was removed from the FCL before it was adopted in '92. Because of  
41 that lobbying effort from industry associations, Montgomery citizens have been without  
42 a Countywide organization for tree advocacy for more than a decade. Citizens have  
43 been confused and frustrated often wondering who to call and how to – how to pursue a  
44 concern about pending tree loss in their communities. The County has changed since



September 19, 2006

1 '91. In response to public concerns over the Clarksborough building violations this  
2 Council voted to provide us with an ability to participate more fully in – planning by  
3 requiring that builders hold public meetings before a project can be reviewed by public  
4 agen—by County agencies. We home that the Council and Park and Planning will  
5 continue to support public involvement in all aspects of land use planning. In reviewing  
6 this legislation, we hope you'll consider the following. We believe the County really  
7 needs a pub – a permanent public forum for the community to participate in tree and  
8 forestry issues. We think that setting it in law would make that more permanent. It might  
9 not be vulnerable to changes in leadership or become a political tool. We think that the  
10 –whoops – what's that—okay, administration should be under Park and Planning. We  
11 agree with Dr. Hanson on that point and I guess I'll just leave the rest for the record.

12  
13 Council President Leventhal,  
14 Thank you very much. Tony Hausner.

15  
16 Tony Hausner  
17 I'm Tony Hausner 203 Brewster Avenue, Silver Springs. I'm representing PRESCO.

18  
19 Unknown Speaker,  
20 Now it's on.

21  
22 Tony Hausner,  
23 Okay, its Tony Hausner 203 Brewster Avenue, Silver Springs. I'm representing  
24 PRESCO the President's Council of Silver Springs Civic Associations. We're 14 civic  
25 associations inside the beltway. We urge the Council to establish a forest preservation  
26 advisory committee. Three years ago we adopted tree management as one of our three  
27 top priorities and have since advocated for improved tree maintenance, better  
28 coordination among the County agencies responsible for trees and the advisory  
29 committee you are considering today. A resolution on tree management was sent to you  
30 all last year and is attached. This resolution enumerate the benefits of trees, the gaps in  
31 the County's tree management program and recommendations for improvement. The  
32 key point is – are that the County has lost nearly 40 percent of its forest since 1973.  
33 Today only 25 percent of the County meets tree canopy cover goals. Trees significantly  
34 improve the quality of life in an urban area because they provide many environmental,  
35 socials esthetics and economic benefits such as improving air quality, improving water  
36 quality by reducing storm water runoff and preventing sediments from entering creeks,  
37 streams, rivers, and lakes, saving energy by shading buildings and cooling the air  
38 reducing the need for air conditioning, acting as visual screens and sound barriers,  
39 reducing highway noise by 6 to 15 decibels and increasing property values. The County  
40 lacks a comprehensive urban forest management plan and an updated tree inventory.  
41 Establishing a forest preservation advisory committee will represent another step by the  
42 Council to address locally the global challenges of climate change and rising energy  
43 prices. A Washington Post article which is attached highlights what several cities are  
44 doing in this area. We're hopeful that an advisory committee can work with the Council





September 19, 2006

1 and executive to make our County a leader in forest preservation as it is in so many  
2 other areas. We are aware that the County Planning Board is recommending another  
3 task force in lieu of this committee. We disagree. Forest preservation is a permanent  
4 issue, and citizens need a permanent voice in shaping the County's green  
5 infrastructure. Task forces come and go and lack the follow through necessary to turn  
6 the recommendations into reality. The 2004 preservation task force is a case in point.  
7 Implementation of its recommendations has been hit or miss. We believe that anything  
8 a task force can do an advisory committee can do better. Thank you for this opportunity  
9 to share our views on this important matter.

10  
11 Council President Leventhal,  
12 Thank you, Tony. Linda Marks.

13  
14 Linda Martz,  
15 That's me. And actually my name is misspelled, it should be T-Z. M-A-R-T-Z. Okay.

16  
17 Council President Leventhal,  
18 Be sure to correct that for the record.

19  
20 Linda Martz,  
21 Okay. I'm a resident of Glencoe Heights was initially attracted to the silly community  
22 because of the trees. In the late 1970s when I first became a homeowner, the  
23 neighborhood was truly an urban forest. In the heat of the summer one could walk  
24 nearly every street in the neighborhood and enjoy the shade. 25 years later it's difficult  
25 to find much shade on any street because our tree canopy has been reduced by at least  
26 a half, probably more. I am fortunate because my own property and those abutting it still  
27 boast many trees which contribute to our relatively low air-conditioning bills, the lack of  
28 basement flooding during periods of heavy or torrential rain fall and the pleasant sounds  
29 and presence of wildlife. In short, I feel trees are a valuable asset to a neighborhood  
30 and it has been a painful experience to watch and listen to the destruction of so many of  
31 our large hard woods as they fall to a chainsaw. I am not alone in these reactions. This  
32 winter our citizen's association mounted an impressive show of support for tree  
33 preservation. However, as an unincorporated jurisdiction we can do little more than  
34 express our concerns and preferences. The County must give us some sort of support.  
35 By providing a place to register our concerns, the proposed forest preservation advisory  
36 committee would certainly be beneficial, it seems to me anyway. We also need  
37 legislation to protect the urban trees on the small lots in the Down County area. An  
38 expansion of the forest conservation law to include lots -- smaller lots of 5,000 square  
39 feet would certainly help in this regard. Finally, new laws and committees will be of little  
40 avail without some means of adequate supervision and enforcement. The County has  
41 been considering tree production measures for some time. But if some action is not  
42 taken soon, we will have few trees left. Replanting is useful, but it takes a long time to  
43 achieve a large tree and in many cases, no space remains to plant large trees. A much  
44 simpler recourse is to emulate the steps taken by some County incorporated



September 19, 2006

1 jurisdictions such as the town of Chevy Chase and protect the trees we now have In  
2 addition to helping maintain clean air, prevent erosion and runoff, and reduce of ever  
3 diminishing natural resources, the County can also contribute to maintaining the quality  
4 of life enjoyed and appreciated by many citizens. Thank you for your time and  
5 consideration.

6  
7 Council President Leventhal,  
8 Excellent. Thank you to all our witnesses. Mr. Perez.

9  
10 Councilmember Perez,  
11 Thank you. Royce, do you have written testimony?

12  
13 Royce Hanson,  
14 Yes.

15  
16 Councilmember Perez,  
17 Oh you did, okay, I'm sorry. I did not see it here.

18  
19 Royce Hanson,  
20 Okay.

21  
22 Councilmember Perez,  
23 I'll look – I'll take a closer look and try and find that. Okay, just so I understand then,  
24 your position is that a task force is sufficient and a committee is not necessary?

25  
26 Royce Hanson,  
27 That's not what we said. -- Having an advisory committee could be very helpful. But we  
28 didn't – the board simply didn't see a reason to do this through an amendment of the –  
29 of the forest conservation legislation.

30  
31 Councilmember Perez,  
32 Okay.

33  
34 Royce Hanson,  
35 What we are – what we're prepared to propose to you is a way of bringing together  
36 these various interests that exist in the forest and tree preservation and saving along  
37 with a number of other environmental issues that are quite closely connected to it such  
38 as water shed protection to produce in time a -- a master plan that also will result in a  
39 series of regulatory changes and other measures that can provide some long-term and  
40 integrated protection of urban forests, trees, water sheds and other important natural  
41 resources of the area and – these are also very much connected to energy issues as  
42 well.

43  
44 Councilmember Perez,



September 19, 2006

1 I would observe that I remember having a meeting with with PRESCO my first year on  
2 the Council and asking them to come up with three priorities and the tree issue was an  
3 issue that was on your list of priorities and then we had Hurricane Isabelle and one of  
4 the things we learned from that is trees do not have a constituency in this County and  
5 we don't pay attention to them until the aftermath and we learn that we're not doing  
6 enough tree trimming and we're not doing enough tree planting and we're not doing  
7 enough, a whole host of things and that's why -- that's why -- that's really, to some  
8 extent, to a large extent, the genesis of where we're at is the absence of a constituency  
9 and we -- we'll continue to have the discussion about the best way to respond to the  
10 absence of that but I do believe a number of folks here and elsewhere have brought to  
11 the floor an -- an issue that is -- needs to be addressed because the data is pretty  
12 significant and after every big storm, then we have the conversation about why didn't we  
13 do this and why didn't we do that and so this is an effort to become more proactive and I  
14 -- I think it makes a lot of sense. I just got your letter, so now I'll read it.

15  
16 Council President Leventhal,  
17 Mr. Denis.

18  
19 Councilmember Denis,  
20 Thank you, Mr. President. As the Council's representative on the Van Holland Task  
21 Force of course I'm very concerned about this and have been for some time, the loss of  
22 our tree canopy is -- is a matter of great -- great urgency and I think the  
23 recommendations of the task force need to be taken very seriously. As a practical  
24 matter, I think it's a matter for the next Council to review in terms of the limitations of the  
25 -- the Council agenda at this particular time. But certainly, Dr. Hanson, I'm glad you are  
26 where you are so you can give us guidance on this. I think basically the  
27 recommendations which were rolled out to the Council several weeks ago are going  
28 from wholesale to retail, so to speak, in terms of tree canopy preservation and trying to  
29 move towards a policy of no net loss of trees if -- to the -- to the fullest possible extent  
30 and I think whether it's a committee that's required by legislation or just your -- your  
31 guidance and the Planning Board's guidance, so we adhere to Council of course, our  
32 staff and members are reviewing the recommendations and I know the Planning Board  
33 is as well. And I look forward to continuing collaborative effort to try to do what I think  
34 needs to be done along those lines. Thank you Dr. Hanson.

35  
36 Royce Hanson,  
37 Thank you. We'll -- we'll try to do that and try to be responsive to the concerns that --  
38 that have been raised. I think clearly you can't have too few trees.

39  
40 Council President Leventhal,  
41 Can't have too many

42  
43 Royce Hanson,



September 19, 2006

1 That's right. Too many. [laughter] Well for some, maybe too few. For us. You can't have  
2 too many.

3  
4 Council President Leventhal,  
5 Okay. I'm trying to keep up with you Royce.

6  
7 Royce Hanson,  
8 It's hard for me to keep up with me sometimes so.

9  
10 Council President Leventhal,  
11 Mr. Perez had another question.

12  
13 Councilmember Perez,  
14 I just – I don't want to speak for him but I think Mr. Subin is recusing himself from this  
15 matter because there's a matter pending against him as a result of his attempted  
16 desecration of a tree. [Laughter]

17  
18 Council President Leventhal,  
19 No, his relationship with the tree community.

20  
21 Councilmember Subin,  
22 Yeah, there's too many trees. Those trees are mean.

23  
24 Council President Leventhal,  
25 Okay. Thank you to our witnesses. We look forward to working on this legislation. And  
26 we are now turning to a public hearing on bill 3706 property tax credit for green  
27 buildings and the Management of Fiscal Policy Committee will schedule its action on  
28 this at a later date. We have two witnesses signed up. I don't actually see – oh here she  
29 is. Anne Ambler and Steve Dryden. Anne please press your button and proceed and  
30 introduce yourself.

31  
32 Anne Ambler,  
33 Good afternoon. My name is Anne Ambler, I'm speaking for our 6,600 members of the  
34 Sierra Club in Montgomery County. I think addressing global climate change is now  
35 generally recognized as useful and buildings, their construction and occupation account  
36 for 48 percent of CO2 emissions so it's entirely appropriate and high time that we  
37 started addressing their construction. It's also appropriate to add incentives and in our  
38 testimony on Mr. Leventhal's green building bill we did suggest incentives at the silver  
39 level and so we were very pleased to see that low and behold we've got incentives at  
40 the silver level. Certainly this generous tax credit should serve as an effective incentive  
41 to go for the silver and at this time there's only the silver leads rating. The Maryland one  
42 I understand doesn't yet exist so the bill would provide for the Maryland one to be  
43 established in the future. But, there are a couple of caveats. To properly evaluate this  
44 proposal, the Sierra Club really needs to know what the fiscal impact is. And that



September 19, 2006

1 statement was not included with the – with the information. But I understand that the  
2 committee will have that information before you actually get down to the nitty-gritty. So,  
3 until though we're able to figure how much does it cost to do a silver building, and how  
4 much does this property tax incentive counterbalance that, we can't really offer full  
5 testimony. Now the – the premium elsewhere for building green has dropped from 3 to 4  
6 percent to 1 to 2 percent in areas where the buildings are being built and the builders  
7 get some experience doing them. And the premium for lead gold seems to be even less  
8 than for lead silver. This is because there's some systems that can counterbalance each  
9 other as you put in your better insulation and windows you then don't have to have as  
10 large a heating system so there are economies along the way. Given that the ball is  
11 already rolling and that energy and water efficient construction, cleaner interior air and  
12 better lighting are increasingly valuable assets to a building owner or a tenor -- tenant,  
13 an incentive that covers the cost of applying to the lead program, plus a bit more, may  
14 be sufficient. The lead – finally, the lead for new construction criteria do not address  
15 control of storm water which is becoming more and more of a problem. So, we would  
16 urge another -- a few more checks on the checklist to cover storm water control to  
17 qualify for the incentives. And finally, we urge that in several years building at the silver  
18 level is going to become commonplace and so then you need to bump up the incentive  
19 to the gold level and ultimately to the platinum level. Nirvana. Thank you, very much.  
20

21 Council President Leventhal,  
22 Thank you. Mr. Dryden.  
23

24 Steve Dryden,  
25 Good afternoon. Okay, excuse me. For the record. My name is Steve Dryden. 5506  
26 Charlcoat Road, Bethesda, Maryland 20817. I'm here today representing the  
27 Montgomery Storm Water Partners Coalition which is a group of 22 environmental and  
28 civic organizations that's working to improve stream health and the quality of our  
29 drinking water supply. I want to thank you for this opportunity to testify in support of bill  
30 3706 which provides a property tax credit for certain buildings that meet certain  
31 environmental and energy standards. The coalition would like to commend Ms. Floreen  
32 for her bill especially in light of climate change and the more general need to conserve  
33 energy. Since its launch over 6 years ago, over 2,000 building products have registered  
34 for LEEDNC in the U.S. and internationally and over 45 million square feet of space has  
35 been certified for LEEDNC. Numerous recent cost studies have shown that this  
36 certification peak can be gained for minimal to no additional cost when compared to  
37 traditional non-green building. We just had one comment on the LEED approach and  
38 the way that the green building Council has worked on this issue so far. In terms of  
39 water efficiency, the LEED program is designed to reduce water usage and reduce the  
40 burden on municipal water treatment and supply systems and that's great. We initially  
41 hope the U.S. green buildings Council which formulated this standard will upgrade its  
42 storm water standards which are actually currently rather weak and certainly don't  
43 reflect the current low impact development or LID state of the art. Buildings and their  
44 landscapes need to be designed so that they infiltrate and conserve water on site rather



September 19, 2006

1 than funneling it off into streams where it pollutes and degrades the Potomac and the  
2 bay. This could be one seamless web of design innovation, and we do see it happening  
3 with rain gardens and other sustainable landscaping techniques that leading edge cities  
4 like Portland Oregon and Chicago are using. And meanwhile, we're happy that  
5 Montgomery has made a start in the direction with the help of the Council's recent LID  
6 funding initiative from ms Floreen and Mr. Silverman. Again, we'd like to thank the  
7 Council for its action and we hope to see further initiatives to improve water quality.  
8 Thank you.

9  
10 Council President Leventhal,  
11 Thank you both have much. There are no questions.

12  
13 Council President Leventhal,  
14 We are on a public hearing on a special appropriation to the Maryland National Planning  
15 Commissions FY07 operating budget. This is \$142,450 for soccer club game fee  
16 subsidies at the Soccer Plex. The Fed Committee is scheduled to take up this matter on  
17 September 28<sup>th</sup> and there are no witnesses. Agenda item 18 is a public hearing on a  
18 supplemental appropriation to Montgomery College's FY07 capital budget. An  
19 amendment to the FY07 through 2012 CIP. 4 million dollars for the Golden Rod  
20 Building renovation. This is also a public hearing on the supplemental appropriation to  
21 the FY07 capital budget and an amendment to the FY07 through 2012 CIP of the  
22 department of economic development 2.8 million dollars for the Germantown business  
23 incubator. The education committee is tentatively scheduled to take up these matters on  
24 September 28th at 10:30 in the morning. Anyone who wants to submit additional  
25 information for the Council to consider should do so by the close of business Monday,  
26 September 25<sup>th</sup>. We have two witnesses. David Edgerley, Director of the Department of  
27 Economic Development and Marilyn Balcombe from the – Germantown Chamber of  
28 Commerce. Mr. Edgerley, please press your button and state your name and begin.

29  
30 Dave Edgerley,  
31 Dave Edgerley, Director of Economic Development, Montgomery County testifying on  
32 behalf of the executive today. I'll be very brief. This is a project that would – would help  
33 us expand our business incubation program as well as serve pressing, growing, critical  
34 needs at the college. We now have, as you probably know, 80 companies in three  
35 buildings being mentored by our business incubation program at shady grove, at Silver  
36 Spring and our newest incubator at Wheaton and I'm very pleased to report to you that  
37 save one or two offices, we are full at that facility. It is – it is a well known established  
38 fact that a significant percentage of businesses fail in the first five years. That trend is  
39 reversed to about an 80 percent success rate if business incubation is applied to the  
40 early stage of the company. This building, 67,000 square feet adjacent to the  
41 Germantown campus represents a unique opportunity to the college and to the  
42 department working together to utilize roughly 50 percent each for academic and for  
43 entrepreneurial activities. By moving quickly, we can acquire this building. Construction  
44 can be substantially complete by the end of this fiscal year and we – we think it's going





September 19, 2006

1 to contribute enormously to the vision of the tech park which was assembled with  
2 support of the Council and the college and the state several years ago. We've been  
3 awarded 1.25 million dollars in state bond bill funds through the general assembly and  
4 we've negotiated \$450,000 in developer tenant improvements to be assigned to – to the  
5 incubator. We've also applied for and expect approval of \$150,000 in Tedco incubator  
6 grant funding. This supplemental was necessary because of the short time frame we  
7 have to complete the lease-purchase transaction. By next summer, the Germantown  
8 incubator could provide over 20 additional early stage high quality companies with  
9 affordable rent, shared services and technology and business support bringing much  
10 needed high quality jobs to the Germantown area of the County. Thank you.

11  
12 Council President Leventhal,  
13 Thank you. Marilyn.

14  
15 Marilyn Balcombe,  
16 My light's not on, am I on, yeah. My name is Marilyn Balcombe. I'm the President of the  
17 -- Germantown Chamber of Commerce. The chamber supports the joint request by  
18 Montgomery College and the department of economic development for the lease-  
19 purchase of the building at Golden Rod in Germantown which is adjacent to the college.  
20 To accommodate the growing space needs for the college and the to allow the business  
21 incubator to – to get started. One of our long-standing commitments at the chamber is  
22 just the support of the Germantown development project. The project will ensure a  
23 pipeline of well educated and trained workers to support the biotechnology and IT  
24 industries, which is the heart of the County's economic development program. As you  
25 know, this project has three components. One component is the bioscience education  
26 center which is finally under design and also the science and technology park which is  
27 patterned after the Shady Grove Life Science center. The third component is the  
28 Germantown business incubator. The current lease-purchase agreement will help kick  
29 start that business incubator. We know how important the availability of incubator space  
30 is to the creation of businesses and jobs in the County. This will be the fourth incubator  
31 and – and -- located in the Up County and Germantown. We also -- the biotech and IT  
32 industries make up a significant and growing portion of the businesses in the  
33 Gaithersburg and Germantown areas. We have plenty of room for more up in the Up  
34 County. The recent urban land substitute study indicated that more effort needs to be  
35 given to attracting industry jobs in the area and the business incubator hopefully will  
36 help provide a much needed stimulus for new businesses in the Germantown  
37 employment corridor. The request also involves funding for the expansion space for  
38 educational programs at the college. We all know that we are bursting at the seams up  
39 in Germantown. Availability of new classroom and laboratory space and the bioscience  
40 education center is several years away, even assuming no further delays in funding.  
41 Something must be done now to alleviate the crowding and ensure that community  
42 college students receive a quality education. There are a large -- a long list of reasons  
43 why this synergy between the business incubators and the college is worthy, if I run out  
44 of space, you'll know why, if I run out of time. Sharing the Golden Rod Building between





September 19, 2006

1 the college and the incubator provides the synergy that's needed between the biotech  
2 program and the incubator. Students will be able to move between the classroom  
3 experience and the businesses and research opportunities all in the same building. The  
4 business incubator will include state of the art scientific equipment, which will be likely  
5 available for the students, internships at the incubator will be accessible to the students  
6 more readily. The college will be able to take advantage of the scientists in the business  
7 incubator while working on cutting technology to teach the college students. The  
8 existence of the business incubator will be a strong marketing point for the science and  
9 technology park if that moves ahead and ready availability of scientists in the business  
10 incubator will help ensure regular curriculum review and ensure students are prepared  
11 for the actual work force opportunities. So, the combination of an incubator right next --  
12 co-located with students learning and teaching is -- is really a -- a great opportunity.  
13 We're very fortunate to have this opportunity that's right adjacent to the college and we  
14 hope that you'll move forward on it. Thank you.

15  
16 Council President Leventhal,  
17 Great. Thank you very much for your testimony. Mr. Knapp.

18  
19 Councilmember Knapp,  
20 Thank you Mr. President, I just wanted to commend the executive and the college for  
21 moving so quickly on this. The fact that this property came available immediately  
22 adjacent to the college is very fortuitous and the fact that we're moving quickly I think  
23 shows a real commitment to continuing to enhance our technology foundation on which  
24 our -- our economic viability is maintained. One of the things for the committee  
25 discussion I'd like to look at is to see if in addition to just -- to being our kind of our  
26 traditional incubator space, if there's something else that we may be looking at, looking  
27 at a clean room or some other type of unique characteristic that we could look at -- at  
28 this site to try and make -- kind of differentiate it from the other incubators that we have  
29 County wide.

30  
31 Council President Leventhal,  
32 Thank you very much. Great. That concludes this item. Thank you. We now turn to a  
33 public hearing on a special appropriation for the FY07 operating budget of the Arts and  
34 Humanities Council in the non-departmental account. The proposal is for \$80,000,  
35 whoops, I'm sorry, item 19, yeah, we're right. \$80,000 for the National Philharmonic.  
36 Action is scheduled following the hearing. So notice to Council members. We're going to  
37 vote at the conclusion of this hearing. We have no witnesses signed up. I see there are  
38 some representatives of the National Philharmonic. Did -- did you want to testify? You  
39 may if you would like. Just press the button and introduce yourself.

40  
41 Ken Oldham,  
42 Hi. Ken Oldham. President of the National Philharmonic I'm here to answer questions  
43 submitted to a very accurate document to you on the background of this and we've  
44 spoken to most of you or your staffs directly.



September 19, 2006

1  
2 Council President Leventhal,  
3 Well then that concludes the hearing. Mr. Subin has a question.

4  
5 Councilmember Subin,  
6 Now, for the record. I'm a member of the advisory board of the national philharmonic,  
7 but I will make the motion to approve the appropriation. I get no -- no benefits. No  
8 nothing.

9  
10 Council President Leventhal,  
11 Okay, the motion has been made by Mr. Subin, seconded by Ms. Floreen. Is there  
12 discussion on the motion? If there is no discussion those in favor will signify by raising  
13 their hands. It is unanimous. Very good. Okay, thank you. Now, we turn to, you know  
14 what while we're voting and while everyone is here, nothing else on National  
15 Philharmonic, thank you very much. Let us quickly approve the public hearing, let me  
16 make sure I'm in the right place, we neglected. Mr. Denis delivered such compelling  
17 testimony relating to the green mile that we were all captivated and we forgot to  
18 schedule the public hearing so we need a resolution. Which agenda item is this?

19  
20 Councilmember Denis,  
21 It's ZTA 06-24.

22  
23 Council President Leventhal,  
24 On item 5.1

25  
26 Councilmember Subin,  
27 5.1

28  
29 Council President Leventhal,  
30 We need a resolution. Mr. Subin has moved and Mrs. Praisner has seconded a  
31 resolution establishing a public hearing on October 24<sup>th</sup> for Zoning Text Amendment 06-  
32 24. Those in favor of holding a public hearing on October 24<sup>th</sup> will signify by raising their  
33 hands. Okay, it is -- the vote is unanimous. We're going to have a public hearing. Come  
34 on, we're almost done. Guys, guys, stay focused. We now have a public hearing to  
35 approve a franchise agreement for the use of public right of way Fiber Technologies  
36 Networks, LLC for a fiber optic network located Upcounty. Action is scheduled following  
37 the hearing. There are no witnesses. Chairwoman Praisner.

38  
39 Councilmember Praisner,  
40 Yes the Management of Fiscal Policy Committee had met already on this and  
41 recommends approval with the proviso that if anything was raised in the hearing, we  
42 would reconsider if we need to. Since there is nothing we need approval, so I'll so  
43 move.



September 19, 2006

1 Council President Leventhal,  
2 I will second Mrs. Praisner's move and the Council president has seconded them, oh,  
3 the committee's already approved it, no need for a second.

4  
5 Unknown Speaker,  
6 Right.

7  
8 Council President Leventhal,  
9 Well you didn't need to make a motion.

10  
11 Councilmember Praisner  
12 Yes, I did. On behalf of the committee.

13  
14 Council President Leventhal,  
15 Well the committee already brought it before us. If you're going to correct me.

16  
17 Councilmember Praisner  
18 Okay.

19  
20 Council President Leventhal,  
21 Those in favor of the committee's recommendation will signify by raising their hands. It  
22 is unanimous.

23  
24 Councilmember Praisner  
25 He's the pirate again. [laughter] --

26  
27 Council President Leventhal,  
28 This is a public hearing on the resolution to approve a County guaranteed bond  
29 financing plan for the housing opportunities commission for the Wheaton Metro Kiss and  
30 Ride Development and we're going to act right after the hearing. We have one witness,  
31 it is Mr. Scott Minton. Please press you button and introduce yourself.

32  
33 Scott Minton,  
34 Good afternoon, Mr. President, members of the Council. My name is Scott Minton, I'm  
35 the Executive Director of the Housing Opportunities Commission. I have with me – Ms.  
36 Brown from our Mortgage Finance Division and Peter Engel from our Development  
37 Division.

38  
39 Unknown Speaker,  
40 Been with us all day.

41  
42 Scott Minton,  
43 Yes. You know Peter better than you know me. I am here today to ask you to approve a  
44 resolution enabling the County to guarantee bonds that HOC will issue to finance the



September 19, 2006

1 construction of our Wheaton Metro Kiss and Ride Development. HOC's development at  
2 the Wheaton Metro Station will be another boost to the revitalization of the Wheaton  
3 business district. I brought with me today a rendering of the plan so you can see the  
4 design. The development will provide multiple benefits to downtown Wheaton. It will  
5 achieve density at the Wheaton Station and transform this underused site. It will bring  
6 even more life to a 24 hour urban character that Wheaton is becoming. The goal is to  
7 ensure that some of the County's low income families will always be able to live at one  
8 of the area's most desirable locations. HOC entered into a joint development agreement  
9 with Washington Metropolitan Transit Authority and Bozzuto development company to  
10 develop the Wheaton site. The development will have 173 units, 18 of which will have  
11 project based housing choice voices and will be reserved for families who earn less  
12 than 30 percent of the median income, for a family of 2 that's about \$22,000. An  
13 additional 35 units will be available to families earning below 50 percent of AMI for a  
14 family of two, that's about 36,000. The remaining 120 apartments will be rented at  
15 market rates. Together state and County law authorized the County to guarantee HOC  
16 bonds issued to finance its developments under certain conditions. The County  
17 executive based on the recommendation of the finance department has requested  
18 Council approval and Council staff has recommended approval. HOC will issue bonds  
19 backed by the County government to finance the construction of the development in  
20 2008, after the completion of construction, HOC will issue bonds for permanent  
21 financing, retiring the construction bonds and relieving the County of its obligation as a  
22 guarantor. It is anticipated that the mortgage will be insured by FHA through the risk  
23 sharing program. Total development cost is 51.8 million-dollars. Proceeds from the  
24 notes will initially generate 36.4 million. In addition HOC anticipates that it's low income  
25 housing tax credits would generate 6.8 million dollars. Others include 3.85 million from  
26 housing initiative fund, 1.5 million dollars from the state partnership rental, . HOC is  
27 kicking its development fee of 2 million dollars and guaranteeing another \$600.00 in  
28 payments and Bozzuto is deferring \$750,000 of development fees so this is a typical  
29 HOC project for everybody in the world --. Additional specifics of the project are  
30 included in the application we submitted to the County executive. We anticipate  
31 breaking ground this fall and are enthusiastic about moving ahead. We appreciate your  
32 support and if you have any questions we'll be glad to answer them.

33  
34 Council President Leventhal,  
35 Mrs. Praisner.

36  
37 Councilmember Praisner  
38 Are there any -- actions that are still pending on this?

39  
40 Scott Minton,  
41 Not at this point.

42  
43 Councilmember Praisner  
44 No, okay, fine. Thank you. I'll move approval.



September 19, 2006

1  
2 Council President Leventhal,  
3 Well I don't know, Mr. Subin, do you have questions for Mr. Minton?

4  
5 Councilmember Subin,  
6 Keeping that color scheme Scott. [laughter]

7  
8 Peter Engel,  
9 The -- the one point -- we've had a number of people comment on the yellow in  
10 particular and that is paint and you know, after hearing a lot of feed back and seeing a  
11 lot of feed back, this is the rendering we did, but I'm seeing a lot of feedback. Actually  
12 the plan is to you can just go out and paint it. This is a surreptitious substance so just go  
13 paint it, 2e're going to take a look and see. It will no longer be that yellow. Thank you.

14  
15 Councilmember Praisner  
16 I'll move approval without the yellow.

17  
18 Councilmember Subin,  
19 I'll second it with the yellow.

20  
21 Council President Leventhal,  
22 Okay, Mrs. Praisner's moved and Mr. Subin has seconded approval of the bond  
23 financing plan for the Wheaton metro development. Those in favor will signify by raising  
24 of hands. It's unanimous.

25  
26 Scott Minton,  
27 Just so you know the commissioners have had the same response.

28  
29 Council President Leventhal,  
30 Agenda item 22.

31  
32 Councilmember Praisner,  
33 You need a magic marker.

34  
35 Council President Leventhal,  
36 Agenda item 22 is a public hearing on corrective map amendment GA56 Edgemoor lot  
37 3, block 12a which would change from the TSR zone to the R60 zone. The lot is located  
38 at the intersection of Arlington Road and Morelan Lane in the Bethesda CBD. We have  
39 one witness, Mr. Steve Robins. Please press your button and proceed.

40  
41 Steve Robins,  
42 Good afternoon, Mr. Leventhal and members of the Council. I'm Steve Robins with the  
43 law firm of -- Here with me today is Phil Liebovitz. He's the property owner for the  
44 subject property here that we're discussing which is at the corner of Arlington Road and



September 19, 2006

1 Morelan Lane, more specifically 7511 Arlington Road in Bethesda. I think Marlene's –  
2 Marlene Michelson's staff really summed up the issue that this property was mapped in  
3 error as TSR property surrounding this piece of property was rezoned as part of a local  
4 map amendment to the TSR zone. This piece of property, which is a relatively small  
5 piece of property was not included in that but was mistakenly mapped as TSR. We have  
6 been working with Phil, we do a –a number of projects with him. This is a piece of his  
7 personal property and we were going back and forth with Park and Planning about is  
8 this zone TSR, is this zone R60, where are we? Help. And, the map showed TSR. We  
9 went down a path of saying okay, if it's on TSR, we'll go for a site plan approval  
10 because that's what would be required. Half- way through the Hearing Examiner at the  
11 request of some residents in Edgemoor got involved just in terms of helping out with  
12 whether this was mistakenly mapped. Everyone agreed it was mistakenly mapped so  
13 the route to take was not TSR, it was really to get it back to what it was which was R60.  
14 In the meantime Mr. Liebowitz really can't do anything with his property because it's not  
15 zoned R60 because it was mistakenly mapped TSR but it's not zone TSR. So, all we  
16 want to do is just cure this defect, get it back to R60. I do compliment Park and Planning  
17 staff on – the decision was made to go for a corrective map amendment to act in such  
18 an expeditious manner and I also would complement your staff as well for getting this  
19 before the Council in such an expeditious manner and just getting this back to R60.  
20 We're here to answer any questions. Otherwise we would support this request to do this  
21 corrective map amendment. Thank you very much.

22  
23 Council President Leventhal,  
24 Thank you very much. Mrs. Praisner moves approval. Is there a second? Mrs. Praisner  
25 has moved and Mr. Denis has seconded approval of corrected map amendment G856.  
26 A roll call vote is required.

27  
28 Council Clerk,  
29 Mr. Denis?

30  
31 Councilmember Denis,  
32 Yes.

33  
34 Council Clerk,  
35 Ms. Floreen?

36  
37 Councilmember Floreen,  
38 Yes

39  
40 Council Clerk,  
41 Mr. Subin?

42  
43 Councilmember Subin,  
44 Yes.



September 19, 2006

1  
2 Council Clerk,  
3 Mr. Silverman?  
4  
5 Councilmember Silverman,  
6 Yes.  
7  
8 Council Clerk,  
9 Mr. Andrews?  
10  
11 Councilmember Andrews  
12 Yes.  
13  
14 Council Clerk,  
15 Mr. Perez?  
16  
17 Councilmember Perez,  
18 Yes.  
19  
20 Council Clerk,  
21 Ms. Praisner?  
22  
23 Councilmember Praisner  
24 Yes.  
25  
26 Council Clerk,  
27 Mr. Leventhal?  
28  
29 Council President Leventhal,  
30 Yes. The corrective map amendment passes on a vote of 8 to 0. The Council stands  
31 adjourned until the hour of 7:30 tonight.  
32  
33 Multiple Speakers,  
34  
35 [INAUDIBLE]